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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~158.~~ 19 1882

WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS, APPELLANTS,

vs.

S. PENFIELD AND THE FIRST NATIONAL BANK OF QUINCY, ILLINOIS.

APPEALED FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED FEBRUARY 4, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 158.

WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS, APPELLANTS,

vs.

URI S. PENFIELD AND THE FIRST NATIONAL BANK OF QUINCY, ILLINOIS.

APPEALED FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 TRANSCRIPT FROM STATE COURT.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss :

In the circuit court of the United States in and for said district.

Be it remembered that on March 17th, 1877, in vacation of the circuit court of the United States for the eastern district of Missouri, there was filed in the office of the clerk of said court a certain transcript of record from the Marion County circuit court; which said transcript is in the words and figures following, to wit:

STATE OF MISSOURI,
County of Marion, ss :

Be it remembered that heretofore, to wit, on the 15th day of May, A. D. 1876, there was filed in the office of the clerk of the circuit court within and for the county of Marion aforesaid a transcript of proceedings had in the circuit court of Lewis County in said State, in the case wherein Uri S. Penfield is plaintiff and Sarah C. Williams and William Y. Williams are defendants, which said transcript is in words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis :

Be it remembered that heretofore, to wit, on the 30th day of June, A. D. 1875, there was filed in the office of the clerk of the circuit court within and for the county of Lewis aforesaid, a petition in suit of Uri S. Penfield against Sarah C. Williams and William G. Williams, which petition is in words and figures as follows, to wit:

In the circuit court of said county. September term, 1875.

STATE OF MISSOURI,
County of Lewis :

URI S. PENFIELD
ag'st
SARAH C. WILLIAMS AND WILLIAM Y. Williams.

2 The plaintiff complains of the defendants and shows to the court that heretofore, and on the 10th day of May, 1873, the First National Bank of Quincy, Illinois, a corporation duly organized and existing under the laws of the said State, duly recovered a judgment in this court against Jacob R. Harris, George H. Simpson, Robert N. Blackwood and William Y. Williams in its favor as plaintiff in such action for the sum of four thousand one hundred and ten $\frac{48}{100}$ dollars ($4,110.48), together with its costs, which judgment was duly docketed in the clerk's office of said court, as will more fully appear by reference to the same. That on the 22nd day of December, 1874, an execution upon said judgment was duly issued against the property of said Jacob R. Harris, George H. Simpson, Robert N. Blackwood, and William Y. Williams, to the sheriff of the county of Lewis aforesaid, that being then and hitherto the county of the residence of the said defendants, Simp-

son, Blackwood and Williams. That heretofore and on the 5th day of March, 1874, the said First National Bank of Quincy, Illinois, duly recovered judgment in this court in its favor as plaintiff in such action against Jacob R. Harris, William Y. Williams, and Robert N. Blackwood and John Sisler, who were defendants in such suit, for the sum of eighteen thousand one hundred and twelve $\frac{50}{100}$ dollars ($18,112.50), which said judgment was duly docketed in the clerk's office of said court, as will more fully appear by reference to the same, and that on the 22nd day of December, 1874, an execution upon said last judgment was duly issued against the property of said defendants to the sheriff of the said Lewis County, that being then and hitherto the county of the residence of the said defendants Williams, Blackwood, and Sisler, and here-

3 tofore, to wit, on the 5th day of March, A. D. 1874, the said First National Bank of Quincy, Illinois, duly recovered another judgment in this court in their favor as plaintiff in such action against Jacob R. Harris, William Y. Williams, Robert N. Blackwood and John Sisler, defendants in such judgment, for the sum of four thousand five hundred and ninety-one dollars and twenty-seven cents, which said judgment was duly docketed in clerk's office of said court which will more fully appear by reference thereto and to the same; that on the 22nd day of December, A. D. 1874, an execution upon said judgment was duly issued against Jacob R. Harris, William Y. Williams, Robert N. Blackwood, and John Sisler, to the sheriff of the county of Lewis aforesaid, that being then and hitherto the county of the residence of the said defendants Williams, Blackwood, & Sisler; that the La Grange Savings Bank, a corporation existing under the laws of the State of Missouri, heretofore and on the 12th day of May, 1873, duly recovered a judgment in this court in its favor as plaintiff in such action against George H. Simpson, William Y. Williams and Robert N. Blackwood, who were defendants in such suit, judgment for the sum of eighteen hundred and ninety-four $\frac{21}{100}$ dollars ($1,894.21), which said judgment was duly docketed in the office of the clerk of said court; that on the 22nd day of December, 1874, an execution upon said judgment was duly issued against the property of the defendants to the sheriff of said Lewis County, that being then hitherto the county of the residence of the defendants Simpson, Williams & Blackwood, and that heretofore and on the 12th day of May, 1873, the La Grange Savings Bank, a corporation existing under and by virtue of the laws of the State of Missouri, duly recovered judgment in this court in its favor as plaintiff in such action against George H. Simpson, William Y. Williams, John S. Walter and Joseph

4 A. Hoy, who were defendants in such suit, judgment for the sum of four thousand one hundred and thirty-eight $\frac{55}{100}$ ($4,138$\frac{55}{100}$), which judgment was duly docketed & filed in the clerk's office of said court, as will more fully appear by reference thereto, that on the 22nd day of December, 1874, an execution upon said judgment was duly issued against the property of said last named defendants to the sheriff of said Lewis County, that being then & henceforth and hitherto the county of the residence of the said defendants last above; that on the 10th day of February, 1875, said sheriff proceeded to execute said costs of execution, being five in number, delivered to him and remaining in his hands as aforesaid, they being then and there in full force and effect and unsatisfied, by levying upon and seizing the real estate described as follows, to wit, commencing at the southwest corner of the southeast quarter of section twenty-five, township sixty-one, range six west, at letter D on county surveyor's plat number one hundred and twenty-five, running north 31 $\frac{60}{100}$ chains to a stone, letter C; thence east 17 $\frac{39}{100}$ chains to a stone, letter M;

thence south to a stone, letter N, $16\frac{90}{100}$ chains; thence west to a stone $9\frac{04}{100}$ chains; thence south to a stone $14\frac{705}{100}$ chains; thence west to a stone, the place of beginning, $8\frac{16}{100}$ chains, containing 42 acres of land, more or less, as the property of said defendant William Y. Williams; also upon the following: that afterward & on the 10th day of March, 1875, the sheriff of said Lewis County under and by virtue of the execution delivered to him as aforesaid, and in pursuance of the levy & seizure as aforesaid, and after he had given notice of such sale according to law, proceeded to se" said real estate & all rights, title, & interest of said William Y. Williams therein at public vendue to the highest bidder in
5 front of the court-house door in the town of Monticello during session of the circuit court, and the same was struck off & sold to Uri S. Penfield in trust for the use of and benefit of the execution creditors aforesaid for the sum of twenty five dollars, his being the highest & best bid therefor, which sum of money was applied by the said sheriff in payment of the costs arising on said executions, and said executions were thereupon returned by said sheriff, unsatisfied in whole or in part, whereupon said sheriff duly expected & acknowledged a sheriff' deed to the real estate above described to pl'ff, Uri S. Penfield, for the purpose aforesaid; that the said judgments still remain in full force and effect, not reversed or satisfied or otherwise vacated, and the said defendants therein have not paid the same to the complainant herein, but has hitherto wholly neglected and refused so to do, and there is now actually and equitably due on said judgment the principal sums and interest. Plaintiffs further state that on about the 13th day of December, 1871, said defendant William Y. Williams, being largely and fraudulently indebted to the United States Government on account of revenue due on tobacco by him manufactured and sold without being stamped according to the acts of Congress, and with the intention, purpose, and motive of placing his property out of the reach of the government, and being otherwise largely indebted to divers other persons in large sums of money, including in part the indebtness herein mentioned, he, the said Williams, on said last date purchased of one James H. Skinner the real estate above described, and with the intent to defraud his creditors aforesaid had the deed made and the legal title conveyed to his wife, the said Sarah C. Williams, and the plaintiff says that the said William Y. Williams paid for the said real estate
6 out of his now individual property, so conveyed to his wife aforesaid. Plaintiff further shows that since the conveyance of the said real estate by said Skinner to said Sarah C. Williams the said defendant William Y. Williams has put lasting and valuable improvements on the said real estate by erecting a large and valuable brick dwelling house, barn, and other out-houses thereon, to the extent and reasonable value of ten thousand dollars, fenced and improved the land, and has set a valuable orchard thereon of the reasonable value of one thousand dollars, all of which improvements have been made out of the individual property of the said William Y. Williams, and while he was so indebted to the government and the judgment creditors aforesaid, and others. Plaintiff further says that the conveyance of the real estate to said Sarah C. Williams, and the placing of the title thereof in his wife by the said William Y. Williams, was merely colorable and made with a view to protecting the same from and placing the value thereof beyond the reach of his creditors, and to enable him to control and enjoy the same and the avails thereof, free from the let or hinderances of said c[illegible]tors, and to hinder and delay his creditors in the collection of their de[illegible]s. Plaintiff further charges that the whole of the purchase money

of the said real estate so conveyed to the said Sarah C. Williams by the procurement of the said William Y. Williams was paid out of the individual money and effects of the said William Y. Williams, and all of the subsequent improvements was made out of the money of his and not from the property of said wife; and the plaintiff claims and demands a full and complete discharge of all such property effects and things in action belonging to the said William Y. Williams, and of all trusts
7 whereby any property, debts or effects are held for the use or benefit of the said defendants, William Y. Williams, and of every sale, assignments or transfer for which he has made of his property or effects, the persons to whom made, the amount and value of the property so sold or transferred, and particularly what is the situation of the said property or other effects sold or transferred at the time of the filing hereof. The plaintiff further demands that the aforesaid deed from the said James H. Skinner, so executed as aforesaid to the defendant Sarah C. Williams, may be decreed to be for the use and benefit of the judgment creditors aforesaid, and that she may be decreed to convey the title of the said real estate to the plaintiff herein for the use and benefit of the judgment creditors of said William Y. Williams aforesaid; also that the title of this plaintiff to the whole interest of the said real estate may be quieted and may be adjudged, established and declared by this court to be free and clear from any lien by virtue of said deed to the said Sarah C. Williams, that the said defendants may be adjudged and declared to have no interest in the said real estate. That an account may be taken under the order of the court of the value of the said improvements so placed on said real estate by the said William Y. Williams since the title was placed in his wife as aforesaid, and that said defendants or one of them may be decreed to pay the plaintiff the judgments aforesaid. That the plaintiff may have such other and further relief in the premises as the nature of the case shall require and as shall be agreeable to equity and good conscience. That a summons may issue out of the court, directed according to law, commanding said defendants to be and appear before this court to answer all and singular the premises, and to obtain to and abide by the order and decree of this court as the court shall deem according to equity.

J. B. ALNERSON &
EMMONS & WELLS,
Attorneys.

8 And afterwards, to wit, on the first day of July, A. D. 1875, there was issued from the office of the clerk of the circuit court upon said petition a summons, which summons is in words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

I do hereby certify that the foregoing is a true copy of the original petition now on file in my office in the above-entitled cause.

Given under my hand and official seal at office in the town of Monticello, in said county, this 1st day of July, 1875.

[SEAL.] CHAS. R. MAGEE, *Clerk.*

Summons.

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court.

The State of Missouri to the sheriff of Lewis County, greeting:

We command you to summon Sarah C. Williams and William Y. Williams, if they be found in your county, to appear before our circuit court to be holden within and for the county of Lewis, at the court-house in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in September next, A. D. 1875, then and there before the judge of our said court to answer the petition of Uri S. Penfield (a certified copy of which said petition is hereto annexed), and have you then and there this writ the return of your action thereupon. Witness my hand as clerk of our said court and the seal thereof. Done at office in Monticello, in the county aforesaid, on the first day of July, A. D. 1875.

[SEAL.] CHARLES R. MAGEE, *Clerk.*

Upon which said summons is the return of the sheriff in words and figures as follows, to wit:

Return.

9 Executed the within writ in the county of Lewis, and State of Missouri, on the 3rd day of July, 1875, by delivering to the within named Sarah C. Williams a copy of the petition and writ and by leaving a copy of the writ with a member of the family over the age of fifteen years at the usual place of abode of the within named William Y. Williams.

W. M. MOORE,
Sheriff Lewis County, Missouri.

And afterwards, to wit, on the 8th day of September, 1875, at a circuit court continued and held at the court-house in the town of Monticello, in the county and State aforesaid, before the Hon. John C. Anderson, judge of said court, among other the following proceedings were had, to wit:

Motion for costs.

U. S. PENFIELD, PLAINTIFF,
against
SARAH C. WILLIAMS ET AL., DEFENDANTS. } Ejectment.

At this day comes said defendants, by their attorneys, and files motion to require plaintiff to give bond for costs; which said motion is in words and figures as follows, to wit:

In the circuit court of Lewis Co., Mo.

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS AND WILLIAM Y. WILLiams, d'f'ts.

Def'ts, by their att'y, moveth the court that plaintiff be ruled to give security for costs which have or may accrue in said cause.

Because plaintiff was at the institution of said suit, and still is, a non-resident of this State.

JOHN J. LOUTHAN, *Att'y.*

Filed Sept. 8th, 1875. C. R. Ma Gee, clerk, by A. F. Poulton, D. C.

And afterwards, to wit, on the 9th day of September, 1875, at a circuit court continued and held as aforesaid, among other the following proceedings were had, to wit:

10 URI S. PENFIELD, PL'FF,
against
SARAH C. WILLIAMS ET AL., D'F'TS. } Ejectment.

At this days comes said parties, by their attorneys, and by leave of the court said defendants withdraw the motion filed herein to require plaintiff to give bond for costs. Thereupon said plaintiff filed bond for costs, with Luther J. Vandiver as his security, which was by the court approved; which said bond is in words and figures as follows, to wit:

Bond for costs.

In the circuit court of Lewis County.

URI S. PENFIELD, PL'FF,
against
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, D'F'TS.

I, L. J. Vandiver, a resident of the State of Missouri, do hereby acknowledge myself bound to pay all the costs that have accraed or may accrue in the above-entitled cause.

Witness my signature this 10th day of September, 1875.

L. J. VANDIVER.

Filed Sept. 9th, 1875. C. R. Ma Gee, clerk, by A. F. Poulton, D. C.

And afterwards, to wit, on the 11th day of September, 1875, at a circuit court continued and held as aforesaid, among others the following proceedings were had, to wit:

URI S. PENFIELD, PLAINTIFF,
against
SARAH C. WILLIAMS ET AL., DEFENDANTS. } Ejectment.

At this day comes said defendants, by their attorney, and files their demurrer to plaintiff's petition; which said demurrer is in words and figures as follows, to wit:

URI S. PENFIELD, PL'FF,
vs.
11 SARAH C. & WM. Y. WILLIAMS, DEF'TS.

Def'ts, by their att'y, demurr*er* to the petition on file herein.

Demurrer.

1st. Because there is a defect of parties pl'ff, the suit not having been brought in the name of the real parties in interest, as shown herein.

2nd. Because several causes of action have been improperly united which do not grow out of the same cause of action and which are not against the same parties.

JNO. J. LAUTHAN,
Att'y for Def'ts.

Filed Sept. 11th, 1875. C. R. Ma Gee, clerk, by A. F. Poulton, D. C.

And afterwards, to wit, at a circuit court continued and held on the 18th day of September, 1875, as aforesaid, among others the following proceedings were had, to wit:

Demurrer withdrawn.

URI S. PENFIELD, PL'FF,
against
SARAH C. WILLIAMS ET AL., D'F'TS.

At this day comes the parties, by their attorneys, and by leave of the court the defendants withdraw the demurrer filed herein, and files motion to strike out part of plaintiff's petition, and cause continued until the next term of this court; which motion is in words and figures as follows, to wit:

Motion.

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS ET AL., DEF'TS.

Def'ts move the court to strike from the petition all that part beginning on the 25th line of the 11th page at the word "plaintiff" & ending on the 14th line of the 12th page with the word "money," because the same is irrelevant; and that part in the 19th line of the 13th page which reads "to the government," and that part in the 21st line of the
12 13th page which reads "and others," because the same are wholly irrelevant, and that part of the 1st line of the 15th page beginning at the words "and the plaintiffs" and ending at the 15 line of the 15 page at the words "filing hereof," because the same is irrelevant and wholly disconnected with pl'ffs first cause of action, and does not grow out of same, nor is it any way connected therewith, & is surplusage.

JOHN J. LONTHAN,
Att'y for Defts.

And afterwards, to wit, on the 12th day of January, 1876, in vacation of court before the clerk thereof, the defendants appeared and filed their answer herein; which answer is as follows, to wit:

Answer.

In circuit court of Lewis County, Missouri.

URI S. PENFIELD, PL'FF,
against
SARAH C. WILLIAMS AND WILLIAM Y. WILLiams, def'ts.

Now come defendants, by leave of court, and for answer to pl'ff' petition

admit that this court duly rendered judgment against one of said def'ts, William Y. Williams, and others, as follows, as alleged in the petition: one rendered May 10th, 1873, for $4,110.48 in favor of the First National Bank of Quincy, Illinois, but aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on the 19th day of June, 1871; one rendered March 5th, 1874, for $4,591.29 in favor of said First National Bank, but aver that the debt on which said judgment was founded was contracted on the 19th day of July, 1871, by Wm. Y. Williams; one rendered March 5th, 1874, for $18,112.50 in favor of said First National Bank, but aver that the debts on which said judgment was founded was contracted by Wm. Y. Williams on the 3rd day of June and the 3rd day of July, 1871; one rendered May 12th, 1873, for $1,894.21, in favor of the La Grange Savings Bank, but
13 aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on the 14th day of August, 1871; one rendered May 12th, 1873, for $4,138.55 in favor of said La Grange Savings Bank, but aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on Feb'y 1st, 1872.

Def'ts admit that, on the 22nd day of Dec'r, 1874, executions were duly issued upon all of said judgments and placed in the hands of the sheriff of said county, and that said sheriff did, on the 10th day of February, 1875, levy all of said executions upon the right, title, and interest of said William Y. Williams in that 42-acre tract set out in pl'ff' petition; and that said sheriff gave proper notice of the sale of said lands, and that in pursuance of said notice he did, on the 10th day of March, 1875, offer for sale all of the right, title, and interest of the said Wm. Y. Williams in said lands at public vendue for cash to the highest bidder in front of the court house door and during the session of said circuit court; and that said lands were then and there bid in by pl'ff Penfield for the sum of twenty-five dollars; and that said sum was by said Penfield paid over to the sheriff and by him credited on said executions; and that said executions were thereupon returned unsatisfied as to the balance; and that said sheriff did thereon execute, acknowledge, and deliver to pl'ff a sheriff's deed for said land. Def'ts further admit that said several judgments against one of these def'ts, Wm. Y. Williams, are regular and unpaid, and that the principal and interest thereon are still due to the aforesaid judgment creditors. Defendants admit that said land was purchased of James H. Skinner by Wm. Y. Williams and paid for out of his own individual means; and that said Skinner by his direction conveyed said land to the def't Sarah
14 C. Williams; and that the true and only consideration for the making of said conveyance was that of love and affection between husband and wife. Def'ts admit that all of the improvements therein, consisting of a brick dwelling-house, a barn, out-houses, fencing same, and the orchard thereon, were made by the said Wm. Y. Williams and paid for out of his own individual means, but deny they are of the value of eleven thousand dollars. They deny that at the date of said conveyance or at the time said improvements were made the said Wm. Y. Williams was indebted to the United States Government for revenue due on tobacco, but pronounce the charges false, malicious, and libellous. They deny that at the date of said conveyance or at the time said improvements were made the said Wm. Y. Williams was indebted to these judgment creditors aforesaid or to any others. They deny that the conveyance made by James H. Skinner to Sarah C. Williams for said land was made for the purpose of hindering and delaying or defrauding the aforesaid judgment creditors or the United States Government or any

other creditors. They deny that any of the aforesaid improvements were made on said lands after the said Wm. Y. Williams had contracted the liabilities upon which said judgments are founded. Def'ts say it is true that James H. Skinner conveyed said land to Sarah C. Williams by his deed, dated Dec'r 13th, 1871, but def'ts aver that said conveyance was, as it shows on its face, merely designed as a deed of correction to correct a supposed misdescription of said land in the former deed for said land from said Skinner to said Sarah C. Williams bearing date Feb'y 11th, 1868. Def'ts aver that said Skinner, by his deed, under seal of date Feb'y 11th, 1868, conveyed the aforesaid land to the def't Sarah C. Williams. That said deed was filed for record on the 24th day of Feb'y,
15 1868, and duly recorded in volume 3 on page 391 of the deed records of this county long prior to the time when any of the liabilities were contracted by the said William Y. Williams on which the aforesaid judgments were founded. Def'ts aver that shortly after the making of said deed, to wit, in the summer of 1868, the said Sarah C. Williams entered upon and took actual possession of said lands and has continued in the possession thereof up to the present time as the rightful, sole owner thereof, of all which pl'ff and the said judgment creditors had due and proper notice.

Def'ts aver that all of the improvements made on said land, to wit, the brick dwelling-house, barn, out-houses, orchard, and fencing, were made shortly after Feb'y 11th, 1868, and long prior to the time that any of the liabilities were contracted by William Y. Williams on which the said judgments were founded.

Def'ts, further answering, aver that at the time said conveyance was made and the improvements aforesaid were put upon said land, and long prior to the contraction of the aforesaid debts, William Y. Williams was perfectly solvent and had large and ample means outside of those invested by him in these lands sufficient to pay off and discharge all indebtedness contracted by him up to those dates, and that all such indebtedness, if any, was long prior to the contraction of said judgment debts fully paid off and discharged, wherefore def'ts say that the said Sarah C. Williams ought in good conscience to be allowed to hold and enjoy as her own property the said lands and improvements forever, discharged from any and all debts subsequently contracted by her said husband, William Y. Williams, either with the pl'ff or the judgment creditors represented by him or the United States Government or any others.

SARAH C. AND WM. Y. WILLIAMS,
By JOHN J. LOUTHAN, *Att'y.*

16 Filed January 12th, 1876. Cha's R. Ma Gee, clerk.

And afterwards, to wit, on the 7th day of March, 1876, at a circuit court continued and held at the court-house, in the town of Monticello, Lewis County, and State of Missouri, by the Hon. John C. Anderson, judge of the said court, among others the following proceedings were had, to wit, in words and figures as follows:

Answer withdrawn.

URI. S. PENFIELD, PL'FF,
against
WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS, def'ts. } Ejectment.

At this day comes said parties, by their attorney; on motion and by agreement and leave of the court the defendants withdraw their an-

admit that this court duly rendered judgment against one of said def'ts, William Y. Williams, and others, as follows, as alleged in the petition: one rendered May 10th, 1873, for $4,110.48 in favor of the First National Bank of Quincy, Illinois, but aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on the 19th day of June, 1871; one rendered March 5th, 1874, for $4,591.29 in favor of said First National Bank, but aver that the debt on which said judgment was founded was contracted on the 19th day of July, 1871, by Wm. Y. Williams; one rendered March 5th, 1874, for $18,112.50 in favor of said First National Bank, but aver that the debts on which said judgment was founded was contracted by Wm. Y. Williams on the 3rd day of June and the 3rd day of July, 1871; one rendered May 12th, 1873, for $1,894.21, in favor of the La Grange Savings Bank, but
13 aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on the 14th day of August, 1871; one rendered May 12th, 1873, for $4,138.55 in favor of said La Grange Savings Bank, but aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on Feb'y 1st, 1872.

Def'ts admit that, on the 22nd day of Dec'r, 1874, executions were duly issued upon all of said judgments and placed in the hands of the sheriff of said county, and that said sheriff did, on the 10th day of February, 1875, levy all of said executions upon the right, title, and interest of said William Y. Williams in that 42-acre tract set out in pl'ff' petition; and that said sheriff gave proper notice of the sale of said lands, and that in pursuance of said notice he did, on the 10th day of March, 1875, offer for sale all of the right, title, and interest of the said Wm. Y. Williams in said lands at public vendue for cash to the highest bidder in front of the court house door and during the session of said circuit court; and that said lands were then and there bid in by pl'ff Penfield for the sum of twenty-five dollars; and that said sum was by said Penfield paid over to the sheriff and by him credited on said executions; and that said executions were thereupon returned unsatisfied as to the balance; and that said sheriff did thereon execute, acknowledge, and deliver to pl'ff a sheriff's deed for said land. Def'ts further admit that said several judgments against one of these def'ts, Wm. Y. Williams, are regular and unpaid, and that the principal and interest thereon are still due to the aforesaid judgment creditors. Defendants admit that said land was purchased of James H. Skinner by Wm. Y. Williams and paid for out of his own individual means; and that said Skinner by his direction conveyed said land to the def't Sarah
14 C. Williams; and that the true and only consideration for the making of said conveyance was that of love and affection between husband and wife. Def'ts admit that all of the improvements therein, consisting of a brick dwelling-house, a barn, out houses, fencing same, and the orchard thereon, were made by the said Wm. Y. Williams and paid for out of his own individual means, but deny they are of the value of eleven thousand dollars. They deny that at the date of said conveyance or at the time said improvements were made the said Wm. Y. Williams was indebted to the United States Government for revenue due on tobacco, but pronounce the charges false, malicious, and libellous. They deny that at the date of said conveyance or at the time said improvements were made the said Wm. Y. Williams was indebted to these judgment creditors aforesaid or to any others. They deny that the conveyance made by James H. Skinner to Sarah C. Williams for said land was made for the purpose of hindering and delaying or defrauding the aforesaid judgment creditors or the United States Government or any

other creditors. They deny that any of the aforesaid improvements were made on said lands after the said Wm. Y. Williams had contracted the liabilities upon which said judgments are founded. Def'ts say it is true that James H. Skinner conveyed said land to Sarah C. Williams by his deed, dated Dec'r 13th, 1871, but def'ts aver that said conveyance was, as it shows on its face, merely designed as a deed of correction to correct a supposed misdescription of said land in the former deed for said land from said Skinner to said Sarah C. Williams bearing date Feb'y 11th, 1868. Def'ts aver that said Skinner, by his deed, under seal of date Feb'y 11th, 1868, conveyed the aforesaid land to the def't Sarah C. Williams.

That said deed was filed for record on the 24th day of Feb'y,
15 1868, and duly recorded in volume 3 on page 391 of the deed records of this county long prior to the time when any of the liabilities were contracted by the said William Y. Williams on which the aforesaid judgments were founded. Def'ts aver that shortly after the making of said deed, to wit, in the summer of 1868, the said Sarah C. Williams entered upon and took actual possession of said lands and has continued in the possession thereof up to the present time as the rightful, sole owner thereof, of all which pl'ff and the said judgment creditors had due and proper notice.

Def'ts aver that all of the improvements made on said land, to wit, the brick dwelling-house, barn, out-houses, orchard, and fencing, were made shortly after Feb'y 11th, 1868, and long prior to the time that any of the liabilities were contracted by William Y. Williams on which the said judgments were founded.

Def'ts, further answering, aver that at the time said conveyance was made and the improvements aforesaid were put upon said land, and long prior to the contraction of the aforesaid debts, William Y. Williams was perfectly solvent and had large and ample means outside of those invested by him in these lands sufficient to pay off and discharge all indebtedness contracted by him up to those dates, and that all such indebtedness, if any, was long prior to the contraction of said judgment debts fully paid off and discharged, wherefore def'ts say that the said Sarah C. Williams ought in good conscience to be allowed to hold and enjoy as her own property the said lands and improvements forever, discharged from any and all debts subsequently contracted by her said husband, William Y. Williams, either with the pl'ff or the judgment creditors represented by him or the United States Government or any others.

SARAH C. AND WM. Y. WILLIAMS,
By JOHN J. LOUTHAN, *Att'y.*

16 Filed January 12th, 1876. Cha's R. Ma Gee, clerk.

And afterwards, to wit, on the 7th day of March, 1876, at a circuit court continued and held at the court-house, in the town of Monticello, Lewis County, and State of Missouri, by the Hon. John C. Anderson, judge of the said court, among others the following proceedings were had, to wit, in words and figures as follows:

Answer withdrawn.

URI. S. PENFIELD, PL'FF,
against
WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS, def'ts. } Ejectment.

At this day comes said parties, by their attorney; on motion and by agreement and leave of the court the defendants withdraw their an-

swer filed herein. It being suggested that Hon. J. C. Anderson, judge of this court, has been of counsel for the plaintiffs, it is ordered by the court and by the agreements of the attorney herein that the venue hereof be changed to the county of Marion, and that the clerk of this court make out a full, true, and complete transcript of the record and proceedings had in this court, together with all the original papers filed in this cause and not forming a part of the record under the seal of this court, and transmit the same to the clerk of the circuit court within and for the county of Marion.

STATE OF MISSOURI,
County of Lewis, ss:

I, Charles R. Ma Gee, clerk of the circuit court within and for the county of Lewis aforesaid, do hereby certify that the above and foregoing pages contain a full, true, correct, and complete transcript of the record and proceedings had in the above entitled cause in this court as fully and completely as the same appears of record
17 and on file in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court. Done at office in Monticello, Mo., this 27th day of April, A. D. 1875.

CHAS. R. MAGEE, *Clerk.* { OFFICIAL }
By JOSEPH FIBLE, *Dep't C.* { SEAL. }

And afterwards, to wit, on the 28th day of July, A. D. 1876, being the 5th day of the regular July term of the circuit court continued and held at the court-house, in the city of Palmyra, county of Marion, State of Missouri, before the Hon. John F. Redd, judge of the 16th judicial circuit of the State of Missouri, and judge of our said court, the following among other proceedings were had, to wit:

LEAVE TO REFILE ANSWER & REPLY TO ANSWER.

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, def'ts.

At this day come the parties herein, by their attorneys; whereupon by leave of court, the motion filed herein to strike out part of plaintiff's petition is withdrawn; whereupon defendant has leave to refile original answer, and original answer refiled; whereupon plaintiff has leave to file replication 60 days before next term, and this cause is continued.

Which said answer refiled is in words and figures following, to wit:

Answer.

In the circuit court of Lewis county, Missouri.

URI S. PENFIELD, PL'FF,
against
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, def'ts.

Now comes def'ts by leave of court, and for answer to pl'ffs petition admit that this court duly rendered judgments against one of said

def'ts, William Y. Williams, and others, as follows, as alleged in
18 the petition: One rendered May 10th, 1873, for $4,110.48 in favor of the First National Bank of Quincy, Ill, but aver that the deft, on which said judgment was founded was contracted by William Y. Williams on the 19th day of June, 1871; one rendered March 5th, 1874, for $4,591.27 in favor of said First National Bank, but aver that the debt on which said judgment was founded was contracted on the 19th day of July 1871, by Wm. Y. Williams; one rendered March 5th, 1874 for $18,112.50 in favor of said First National Bank, but aver that the debts on which said judgment was founded was contracted by Wm. Y. Williams on the 3rd day of June and the 3rd day of July, 1871; one rendered May 12th, 1873, for $1,894.21 in favor of the La Grange Savings Bank, but aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on the 14th day of August, 1871; one rendered May 12th, 1873, for $4,138.55 in favor of said La Grange Savings Bank, but aver that the debt on which said judgment was founded was contracted by Wm. Y. Williams on Feb'y 1st, 1872. Def'ts admit that on the 22nd day of Dec'r, 1874, executions were duly issued upon all of said judgments and placed in the hands of the sheriff of said county, and that said sheriff did, on the 10th day of Feb'y, 1875, levy all of said executions upon the right, title and interest of said William Y. Williams in that 42-acre tract set out in pl'ff's petition, and that said sheriff gave proper notice of the sale of said lands, and that in pursuance of said notice he did, on the 10th day of March, 1875, offer for sale all of the right, title and interest of the said William Y. Williams in said lands, at public vendue, for cash, to the highest bidder, in front of the court-house door, and during the session of said circuit court;
19 and that said lands were then and there bid in by pl'ff Penfield for the sum of twenty-five dollars, and that said sum was by said Penfield paid over to the sheriff, and by him credited on said executions, and that said executions were thereupon returned unsatisfied as to the balance; and that said sheriff did thereon execute, acknowledge and deliver to pl'ff a sheriff's fee for said land. Def'ts further admit that said several judgments against one of these def'ts, Wm. Y. Williams, are regular and unpaid, and that principal and interest thereon are still due to the aforesaid judgment creditors. Def'ts admit that said lands were purchased of James H. Skinner by Wm. Y. Williams, and paid for out of his own individual means; and that said Skinner, by his direction, conveyed said land to the def't Sarah C. Williams, and that the true and only consideration for the making of said conveyance was that of love and affection between husband and wife. Def'ts admit that all of the improvements thereon, consisting of a brick dwelling-house, a barn, out-houses, fencing same, and that the orchard thereon were made by the said William Y. Williams and paid for out of his own individual means, but deny they are of the value of eleven thousand dollars. They deny that at the date of said conveyance, or at the time said improvements were made, the said Wm. Y. Williams was indebted to the United States Government for revenue due on tobacco, but pronounce the charge false, malicious and libellous. They deny that at the date of said conveyance, or at the time said improvements were made, the said Wm. Y. Williams was indebted to these judgment creditors aforesaid, or any others. They deny that the conveyance made by James H. Skinner to Sarah C. Williams for said land was made for the purpose of hindering, delaying or defrauding the aforesaid judg-
20 ment creditors, or the United States Government, or any other creditors. They deny that any of the aforesaid improvements

were made on said land after the said Wm. Y. Williams had contracted the liabilities upon which said judgments are founded. Def'ts say it is true that James H. Skinner conveyed said lands to Sarah C. Williams by his deed, dated Dec'r 13th, 1871, but def'ts aver that said conveyance was, as it shows on its face, merely designed as a deed of correction, to correct a supposed misdescription of said land in the former deed for said land from said Skinner to Sarah C. Williams, bearing date Febr'y 19th, 1868. Def'ts aver that said Skinner, by his deed, under seal, of date Feb'y 11th, 1868, conveyed the aforesaid land to the def't Sarah C. Williams; that said deed was filed for record on the 24th day of February, 1868, and duly recorded in volume 3, on page 391 of the deed records of this county long prior to the time when any of the liabilities were contracted by the said Wm. Y. Williams on which the aforesaid judgments were founded. Def'ts aver that shortly after the making of said deed, to wit, in the summer of 1868, the said Sarah C. Williams entered upon and took actual possession of said land, and has continued in the possession thereof up to the present time as the rightful, sole owner thereof; of all which pl'ff and the said judgment creditors had due and proper notice. Def'ts aver that all of the improvements made on said land, to wit, the brick dwelling-house, barn, outhouses, orchard and fencing, were made shortly after Feb'y 11th, 1868, and long prior to the time that any of the liabilities were contracted by Wm. Y. Williams on which the said judgments were founded. Def'ts further answering, aver that at the time said conveyance was made
21 and the improvements aforesaid were put upon said land, and long prior to the contraction of the aforesaid debts, the def't Wm. Y. Williams was perfectly solvent, and had large and ample means, outside of those invested by him in these lands, sufficient to pay off and discharge all indebtedness contracted by him up to those dates, and that all such indebtedness, if any, was long prior to the contraction of said judgments debts fully paid off and discharged. Wherefore def'ts say that the said Sarah C. Williams ought in good conscience to be allowed to hold and enjoy as her own property the said lands and improvements forever, discharged from any and all debts subsequently contracted by her said husband, Wm. Y. Williams, either with the pl'ff or the judgment creditor represented by him, or the United States Government, or any others.

WM. Y. WILLIAMS,
SARAH. C. WILLIAMS,
By JNO. J. LONTHAN,
Att'y.

And afterwards, to-wit, on the 19th day of December, 1876, there was filed in the office of the clerk of the circuit court within and for said county of Marion and State of Missouri plaintiff's reply to defendants' answer in said cause, which said reply is words and figures as follows, to wit:

Reply.

In the circuit court of Marion County, State of Missouri.

URI S. PENFIELD, PL'FF,
against
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, def'ts.

Plaintiff, by leave of court first had and obtained, comes and replies to defendants' answer, and denies that the debt on which judg't was

rendered May 10th, 1873, for $4,110.48 in favor of the First National Bank of Quincy, Illinois, was contracted by Wm. Y. Williams on the 19th day of June, 1871, and *that* say the note of that date was a
22 renewal note of a debt long before contracted by def't. Plaintiff denies that the judgment rendered March 5th, 1874, for $4,591.27 in favor of said First National Bank was on a debt contracted on the 19th day of July, 1871, by said William Y. Williams, and say that the debt of that date was a renewal note of a debt long before contracted by def't. Plaintiff denies that the judgment rendered March 5th, 1874, for $18,112.50 in favor of said First National Bank was founded on debts contracted by Wm. Y. Williams on the 3rd day of June & 30th of July, 1871, and say that the debts of these dates were renewal notes on debts long before contracted by said Williams. Plaintiff denies that the judgment rendered May 12th, 1873, for $1,894.21 in favor of the La Grange Savings Bank was founded on a contract contracted by Wm. Y. Williams on the 14th day of August, 1871, and aver that said judgment was founded on a renewal note of that date, and that said debt was contracted by def't long previous to that date. Plaintiff denies that the judgment rendered May 12th, 1873, for $4,138.55 in favor of the La Grange Savings Bank was founded on a debt contracted by said def't on 1st Feb., 1872, and aver that said judgment was founded on a renewal note of that date, on a debt contracted long previous to that date by said def't. Plaintiff says it is true, as he has been informed and believes, that this def't at the date the improvements were made on land in controversy was indebted to the United States Government for revenue on tobacco, & that the charge is neither false, malicious or libelous, and that it is true that at the date said conveyance of these lands were so made to Sarah C. Williams the said Wm. Y. Williams was indebted to these judg't creditors and to others. Plaintiff avers that the conveyance made by Skinner to said Sarah C. Williams for said lands was made for the purpose of hindering, delaying and defrauding the aforesaid judgment creditors and others. Plaintiff avers that said improvements were made on these lands after the said Wm. Y. Williams contracted the liabilities
23 upon which said judgments are founded, and aver that all of these judgments are on renewal notes.

Plaintiff denies that said Skinner, by his deed under seal of date Feb. 11th, 1868, conveyed these lands to def't Sarah C., or that said deed was filed for record on the 24th day of Feb., 1868, for the land in controversy, or that any such deed was duly recorded in the records of Lewis County, or prior to the date these liabilities were contracted by the said Wm. Y. Williams, on which the aforesaid judgments were rendered. Plaintiff denies that in the summer of 1868 said Sarah C. entered upon and took actual possession of said lands and has continued in the actual possession thereof up to the present date as the rightful, sole owner thereof, or that the judg't creditors had due and proper notice, and charges the fact to be that def't Wm. Y. Williams took possession thereof about the date stated, as the lawful owner, and has been in the actual possession ever since, and received the rents and profits of the same.

Plaintiff denies that all the improvements made on said land, to wit, the brick dwelling house, barn, out-house, orchard, and fencings, were made before any of these liabilities were contracted by Wm. Y. Williams, on which said judgments were founded, and says the same is not true.

Plaintiff, further replying, says it is not true that at the time said con-

veyance was made and the improvements aforesaid were put upon said land, and long prior to the contraction of the aforesaid debts, that the defendant Wm. Y. Williams was perfectly solvent and had large means, outside of these invested by him in these lands, sufficient to pay off and discharge all indebtedness contracted by him up to these
24 dates, and that all such indebtedness, if any, was long prior to the contraction of said judgment debts fully paid off and discharged.

U. S. PENFIELD, *Pl'ff.*
By WELLS & EMMONS AND J. B. ALBERSON, *Att'ys.*

And afterwards, to wit, at a circuit court continued and held at the court-house, in the city of Palmyra, county of Marion, and State aforesaid, and on the 28th day of February, 1877, being the third day of the regular February term of said court, before the Hon. John T. Redd, judge as aforesaid, the following among other proceedings were had, to wit:

Filing of motion, petition, and bond.

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS AND WM. Y. WILLIAMS,
DEF'TS.

At this day comes the plaintiff herein, by his attorney, and files motion, petition, and bond, praying court that an order may be made by this court to remove this cause into the next term of the circuit court of the United States for the eastern district of Missouri, to be holden at St. Louis, in the said State of Missouri, on the third Monday in March, 1877.

Which said motion is in words and figures as following, to wit:

Motion.

In circuit court thereof, Feb'y term, 1877.

STATE OF MISSOURI,
County of Marion:

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS AND W. Y. WILLIAMS,
DEF'TS.

Now on this day comes the said plaintiff, by his att'ys, and moves the court to transfer said cause to the United States circuit court for the eastern district of Missouri.

G. B. ALBERSON AND L. E. EMMONS,
Att'y for Def't.

25 Which said petition is in words and figures as follows, to wit:

Petition.

In the circuit court of said county of the February term, 1877.

STATE OF MISSOURI,
County of Marion:

URI S. PENFIELD, PLAINTIFF,
vs.
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, defendants.

And now comes the said plaintiff and represents to the said court that the plaintiff in the said suit was at the time of the commencement thereof, and ever since has been, and still is a citizen of the State of Illinois, and not of the State of Missouri, and that the said defendants were at the time of the commencement of said suit, and ever since have been, and still are citizens of the State of Missouri, and the said plaintiff further shows that the matter in controversy and dispute in said cause exceeds the sum of five hundred dollars exclusive of costs, as will appear to the court by reference to the writ and declarations herein; that the amount claimed by said plaintiff from said defendants about real estate of value at least one thousand dollars, wherefore the said plaintiff prays that in accordance with the law of Congress in such cases made and provided an order may be made by this honorable court that said suit be removed for trial into the next term of the circuit court of the United States for eastern district of Missouri, to be holden at St. Louis, in said State of Missouri, on the third Monday of March, 1877, and the plaintiff offers as surety that he will enter in and file in said circuit court of the United States, on the first day of its session, in said March term thereof, a copy of the record in said suit, the bond of the plaintiff and of J. B. Alverson and J. M. Bates, as sureties, running to the
26 defendants in the penal sum of one thousand dollars, conditional that the said plaintiff will file a copy of the record in said cause in said United States circuit court as aforesaid.

URI S. PENFIELD.
J. B. ALVERSON, &
EMMONS & WELLS,
His Attorneys.

STATE OF ILLINOIS,
Adams County, ss:

Uri S. Penfield, of Quincy, in said county of Adams, being duly sworn, upon his oath says that he has read the above petition, and that the matters stated therein are true in substance and in fact.

URI S. PENFIELD.

STATE OF ILLINOIS,
Adams County:

Subscribed and sworn to before me this 27th day of February, A. D. 1877.

[SEAL.]

L. E. EMMONS,
Notary Public.

Which said bond is in words and figures as follows, to wit:

Bond.

Know all men by these presents that Uri S. Penfield, as principal and J. B. Alverson and J. M. Bates, sureties, are held and firmly bound unto Sarah C. Williams and William Y. Williams in the penal sum of one thousand dollars, to be paid to the said Sarah C. Williams and William Y. Williams, their heirs, executors, administrators, and assigns to the payment whereof well and truly to be made the said Uri S. Penfield and J. B. Alverson and J. N. Bates jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents. In witness whereof the said Uri S. Penfield, J. B. Alverson and J. M. Bates have hereunto set their hands and seals this 27th day of February, A. D. 1877.

The condition of this obligation is such that whereas the said Uri S. Penfield brought a suit in the circuit court of Lewis County, in the State of Missouri, to the September term, A. D. 1875, of said
27 court, against said Sarah C. Williams and William Y. Williams (and whereas said cause has been removed by a change of venue to the circuit court of Marion County, State of Missouri), to recover the possession of real estate of the sum of one thousand and upwards dollars, which suit is still pending and undetermined. And whereas the said Uri S. Penfield is about to file his petition in said Marion circuit court, of said Marion County, praying that said suit may be removed for trial into the next term of the circuit court of the United States for the eastern district of Missouri, to be held at St. Louis, in said State of Missouri, commencing the third Monday in the month of March, A. D. 1877:

Now if the said Uri S. Penfield upon the granting of the petition aforesaid shall enter in the said court of the United States, on the first day of said session thereof, a complete copy of the record in such suit, and will pay all costs that may be awarded by the said United States circuit court, if said court shall hold that said suit was wrongfully or improperly awarded thereto, and shall do such other things as such court may order, and the acts of Congress required to be done in such cases, then this obligation shall be void; otherwise to remain in full force and effect.

URI S. PENFIELD. [SEAL.]
J. B. ALVERSON. [SEAL.]
J. M. BATES. [SEAL.]

STATE OF MISSOURI,
Marion County:

J. B. Alverson on oath says that he is the security to the annexed bond, and that he is worth at least two thousand dollars over and above all exemptions and indebtedness.

J. B. ALVERSON.

Subscribed & sworn to before me this 20th day of Feb'y, 1877.
28 [SEAL.] JOSEPH H. DONLEY,
Clerk of the Marion Cir. Court.

And afterwards, to wit, at a circuit court continued and held at the court-house, in the city of Palmyra, county of Marion, State of Missouri, on the first day of March, being the fourth day of the regular February

term, 1877, before the Hon. John T. Redd, judge as aforesaid, the following, among other proceedings, were had, to wit:

Order to remove cause.

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, def'ts.

At this day come the parties herein by their attorneys, whereupon on motion, petition, bond, and affidavit of plaintiff, filed herein in accordance with the law of Congress in such cases made and provided, it is ordered by the court that this suit be removed for trial into the next term of the circuit court of the United States of the eastern district of the State of Missouri, to be holden at St. Louis, in St. Louis County, and said State, commencing on the third Monday in March, A. D. 1877, and it is ordered by the court that the clerk of this court make out a full, true, and complete transcript of the records and proceedings had in this court in this cause, together with all the original papers filed herein, and not forming a part of the record under the seal of this court, and transmit the same to the clerk of the circuit court of the United States for the eastern district of Missouri, to be held in the city of St. Louis and St. Louis County, Mo. And afterwards, to wit, on the same day, the following, among other proceedings, were had, to wit:

Judg't for costs.

URI S. PENFIELD, PL'FF,
vs.
SARAH C. WILLIAMS AND WILLIAM Y. WILLIAMS, def'ts.

29 At this day come the parties herein by their attorneys, whereupon defendants file motion to tax costs against plaintiff accrued at this term of court, which said motion now coming on to be heard, being seen and duly considered, is by the sustained. It is therefore considered by the court that the defendants have and recover of the plaintiff their costs in this behalf, at this term of court expended, and that they have hereof their writ of execution therefor, which said motion is in words and figures as follows, to wit:

Motion.

URI S. PENFIELD, PL'FF,
vs.
WILLIAM Y. WILLIAMS ET. AL., DEF'T.

Def'ts by their att'ys come and move the court that the costs accrued herein at the February term of this court for 1877 be taxed against pl'ff: 1st. Because pl'ff did not give def'ts reasonable notice of his intention to apply for a removal of said cause from this court to the United States circuit court. 2nd. Because no notice of said intention to remove said cause was given def'ts until the filing thereof at this term, on the day this cause was set for trial. 3rd. Because def'ts have incurred consid

erable costs in getting ready for trial by having a large number of witnesses subpœnaed to said term and in attendance on this court.

ANDERSON & BOULWARE & LOUTHANS,
Att'ys for Def'ts.

Which said motion is endorsed: Filed March 1st, 1877, by J. H. Donley, clerk.

Clerk's certificate.

STATE OF MISSOURI,
County of Marion, ss:

I, Joseph H. Donley, clerk of the circuit court within and for the county of Marion aforesaid, do hereby certify that the above and foregoing pages contain a full, true, correct, and complete transcript of the record and proceedings had in the above-entitled cause in this
30 court as fully and completely as the same appears of record and on file in my said office. In testimony whereof I have hereunto set my hand and affixed the seal of said court. Done at office in Palmyra, Mo., on this the 7th day of March, A. D. 1877.

[SEAL.] JOS. H. DONLEY, *Clerk.*

31 And afterwards, to wit, on the tenth day of December, A. D. 1877, there was filed in said cause in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri, an amended bill in words and figures following, to wit:

Amended bill.

In the United States circuit court for the eastern district of Missouri.

To the judges of the circuit court of the United States for the eastern district of Missouri:

Uri S. Penfield, of the city of Quincy, in the State of Missouri, and a citizen of said State of Illinois, and the First National Bank of Quincy, of said city of Quincy, and a citizen of said State of Illinois, bring this their amended bill against William Y. Williams, Sarah C. Williams, and the La Grange Savings Bank, each and all of them of the county of Lewis, in the State of Missouri, and citizens of said State of Missouri, leave of the court being first had and obtained to file the same,
32 and to join the said First National Bank of Quincy a coplaintiff herein; and thereupon your orators complain and say that your orator the said the First National Bank of Quincy is and prior to the 1st day of February, 1868, was a banking corporation organized and existing under and pursuant to the act of Congress of the United States entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864; that on and prior to the 11th day of February, 1868, the said William Y. Williams was largely indebted to divers persons in divers large sums of money, and his property was inconsiderable in amount & value & insufficient to pay his debts, and he was wholly insolvent; that at and prior to said 11th day of February the said William Y. owed and was indebted to your orator First National Bank of Quincy divers large sums of money which still remain unpaid, and he then and there also owed divers large sums of money to his co-defendant the said The La Grange Saving Bank, and to others, which also remain

33 unpaid. That the said William Y., being engaged in the business of buying, manufacturing and selling tobacco, and expecting and intending to continue in said business, a business subject to many and great risks and hazards, and known to him to be so, and expecting and intending, as occasion might require, to borrow money, and contract and incur debts and liabilities in the prosecution of his business, he, the said William Y., intending to provide, and for the purpose of providing a home for himself and family, and of placing it beyond the contingencies of adverse fortune in business, and out of the reach of his creditors, existing and prospective, on or about the 11th day of February, 1868, purchased from one James H. Skinner the tract of land next below described for the price and sum of four thousand eight hundred dollars, and afterwards, on said 11th day of February, procured the said Skinner to seal and deliver a deed dated the 11th day of February, 1868, for the conveyance and transfer of said tract of land to the said Sarah C.
34 Williams, the then wife of him, the said William Y., and he, the said William Y., paid the said purchase price of said tract with and out of his own money, and not with the money of the said Sarah C. Williams, or with money on which she had any right or interest. That it took and required all the property and estate which the said William Y. then had to pay said purchase price. The said deed by which it was attempted to convey said tract to the said Sarah C. was afterwards discovered to have misdescribed the property so purchased from said Skinner, and to correct the error in the description the defendant William Y. afterwards procured the said Skinner to make a second deed, which bears date the 13th day of December, 1871, which is effectual for said purpose. Your orators produce and file copies of the record of both deeds, the copy of the first being marked Exhibit A, and that of the second is marked Exhibit B, and are prayed to be taken and considered as parts of this bill.

The tract so purchased from said Skinner and so conveyed
35 and intended to be conveyed by said deeds, Exhibits A & B, is situated and lies in the county of Lewis, in the State of Missouri, and is meted, bounded, and described as follows, viz: Commencing at the southwest corner of the southeast quarter of section No. twenty-five (25), in township No. sixty-one (61), in range No. six (6) W., at letter D on county surveyor's plat No. 124, running north $31\frac{69}{100}$ chains to a stone, letter C; thence east $17\frac{39}{100}$ chains to a stone, letter M; thence south $16\frac{90}{100}$ chains to a stone, letter N; thence west $9\frac{04}{100}$ chains to a stone; thence south $14\frac{79}{100}$ chains to a stone; and thence west $8\frac{16}{100}$ chains to the place of beginning, containing 42 acres, more or less.

And your orators aver the fact to be that said William Y. purchased and paid for said tract of land, and caused the same to be conveyed to his wife, the said Sarah C., as aforesaid, at a time when he was largely indebted and insolvent, and when he was contemplating the contracting of debts in the future, and with the intent to hinder, delay, and
36 defraud his creditors, existing and future, of their just debts and claims against him.

Your orators further say that the said William Y., in accordance with his said purpose, did engage in said business of buying, manufacturing and selling tobacco, and continued therein until about the year 1871, and in the prosecution of his said business he contracted numerous debts and liabilities, many of which remain unpaid. That afterwards your orator, the said the First National Bank of Quincy, recovered three several judgments against the said William Y. Williams and others in the circuit court of Lewis County, in this State, one of them on the

10th day of May, 1873, for the sum of $4,110\frac{48}{100}$ dollars debt and interest; another of them on the 5th day of March, 1874, for the sum of $4,591\frac{27}{100}$ dollars debt and interest, and the third of them on said 5th day of March, 1874, for debt and interest, the sum of $18,112\frac{50}{100}$ dollars. That the said The La Grange Savings Bank, on the 12th day of May, 1873, recovered two several judgments against said William Y.
37 and others in the said circuit court of Lewis County, one of them for debt and interest, the sum of $1,894\frac{21}{100}$ dollars, and the other of them for debt and interest, the sum of $4,138\frac{55}{100}$ dollars, the said circuit court of Lewis County having at the times of the rendition of the said several judgments hereinbefore mentioned jurisdiction of the said William Y. Williams; that the said several recoveries were of debts contracted prior to said purchase from said Skinner, the payment of which had been extended from time to time by renewal notes given by said William Y. and his copromissors, and accepted by the creditor for that purpose; that said several judgments are still in full force, in no wise reversed, annulled, or satisfied, copies of which and of the records and proceedings of the court in the cases in which they were recovered are herewith filed and are made and are respectively marked Exhibits C, D, E, F, and G in the cause, and are prayed to be taken and considered as parts of this bill.

38 That afterwards, on the 22nd day of December, 1874, there was an execution issued in due form of law, on each of said several judgments, by the clerk of said Lewis circuit court, under the seal of said court returnable to the then next term of said circuit court, and addressed to the sheriff of said county of Lewis to be executed, which said execution afterwards, on said 22nd day of December, came to the hands of William M. Moore, esq., the then sheriff of said county of Lewis, who afterwards, on the 10th day of February, 1875, and before the return of said executions, for the purpose of obedience to the command of said executions, levied upon and seized all the right, title, interest, and estate of the said William Y. in and to the said tract of land hereinbefore described; and the said William M. Moore, as such sheriff, afterwards, on the 10th day of March, 1875, under and by authority of said writs of execution, exposed said tract of land so
39 levied upon to sale at auction, to the highest bidder for cash, at the front door of the court-house of said county of Lewis, while the circuit court of said county was in session; the said sheriff having first given the previous notice required by law, and your orator, Uri S. Penfield, being the highest bidder, then and there became the purchaser of said tract of land at the sum and price of twenty-five dollars, in trust for the use and benefit of said execution creditor'; and thereupon the said Wm. M. Moore, as such sheriff, pursuant to and for the completion of said sale to said Uri S., sealed and delivered to your orator, the said Uri S., his certain deed of conveyance, whereby as such sheriff he conveyed and transferred all the right, title, interest, and estate of the said William Y. in and to said tract of land unto your orator, the said Uri S. Penfield, expressly in trust for the use and benefit of the said execution creditors. A
40 copy of the record of said sheriff's deed is herewith filed and made and marked Exhibit H, in this cause, and is prayed to be taken and considered as part of this bill.

And your orators further say that the said sheriff, being unable to find any other property of the said William Y. or of any other defendant in said executions from which to make the sums of money, or any part thereof, demandable on said executions, except two town lots

of one Robert N. Blackwood, which he, the said sheriff, sold under said executions for the sum of ten dollars at the same time he sold said tract of said William Y., and the said sheriff did therefore, thereupon, after applying the thirty-five dollars made by said two sales to the costs on the several executions, returned said executions "not satisfied." Your orators further state that immediately upon his said purchase from said Skinner the said William Y. entered into the possession
of and took up his abode with his family on said tract of land,
41 and from thence hitherto hath held and possessed, and still doth hold and possess, the same, and denies to your orators and to his creditors any rights therein; that long after said purchase from Skinner, and after Skinner's said conveyance to the said Sarah C., the said William Y. being largely in debt and hopelessly insolvent, and in expectation of contracting future debts, with intent to hinder, delay, and defraud his creditors existing and future, and for the purpose of placing his property and estate out of the reach of his creditors and in such position as that he and his family might use and enjoy the same in defiance of his creditors existing and future, he, the said William Y., with the knowledge, consent, and approval of his said wife, made and put upon said tract of land divers valuable and permanent improvements; that is to say, he erected and built on said tract an elegant, spacious, and valuable brick dwelling-house, a large barn, and a number of useful and needful outhouses, he enclosed the tract with a good and
42 substantial fence, and made divers subdivision fences; he planted out numerous fruit and ornamental trees, vines, and shrubs, and opened up and reduced the tract to cultivation at an aggregate cost of not less than eleven thousand dollars, all of which he, the said William Y., paid for out of his own resources and with his own money, and not from the resources or with the money of his said wife, to the great wrong and injury of his creditors, and especially of your orators.

And your orators further aver and charge that said conveyances so made of said tract by said Skinner were made without any consideration valuable in the law moving from the said Sarah C., and she, the said Sarah C., accepted the same and whatever rights they transferred with full knowledge and notice of all of the misconduct and unlawful practices and purposes hereinbefore imputed to the said William Y.; and she, the said Sarah C., has combined and confederated with her husband to withhold from the plaintiffs the said tract of land and all
43 the moneys of her said husband invested in the purchase and improvement of said tract, and to cheat and defraud the complainants and other creditors of their lawful demands.

Wherefore, may it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the said William Y. Williams, Sarah C. Williams, and the La Grange Savings Bank, thereby commanding them and every of them at a certain day and under a certain pain, therein to be specified, to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises (but not on oath, the oath of the defendants to their answers being expressly waived by the complainants), and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and if on the hearing of this cause it shall appear that said conveyance by said Skinner to
44 the said Sarah C. was and is inoperative as against the creditors of the said William Y., your orators pray that the title to said tract be decreed to and vested in your orator, Uri S., upon the trusts upon which he so as aforesaid purchased the same, and that the posses

sion of said tract and premises be delivered to your orator, the said Uri S., for the use and benefit of his said cestui que trusts; but if on the other hand said conveyance shall be found to be operative as against your orators, your orators pray that an account be taken of the moneys of the said William Y. expended in the making of said improvements upon said tract, and that the sums so expended be decreed to be a charge and incumbrance upon said tract of land in favor of your orator, the said The First National Bank of Quincy, and that in default of the payment thereof the said tract of land be sold, and that so much of the proceeds of such sale as is represented by the moneys invested in said improvements be applied in satisfaction (if sufficient) of the said
45 judgments so recovered and standing unsatisfied in said circuit court of Lewis County, and that your orators have such other and further relief in the premises as the nature of their case shall require and to your honors shall seem meet; and your orators shall ever pray.

H. L. & T. W. LIPSCOMB,
I. B. ALVERSON, AND
DRYDEN & DRYDEN,
Solicitors for Compl'ts.

Said Exhibit A, referred to in the foregoing amended bill, is in words and figures following, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the recorder's office.

Among other instruments of writing on record in said office is the following, in words and figures as follows, to wit:

EXHIBIT A.

This indenture made on the eleventh day of February, A. D. one thousand eight hundred and sixty-eight, by and between James H. Skinner and Mattie C. Skinner, of La Grange, Lewis County, Missouri, parties of the first part, and Sarah C. Williams, of the county of Lewis,
46 in the State of Missouri, party of the second part, witnesseth that the said parties of the first part in consideration of four thousand eight hundred dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, her heirs and assigns, the following described lots, tracts, or parcels of land lying, being and situate in the county of Lewis and State of Missouri, to wit:

All of commencing at the southwest corner section (25) twenty-five, township sixty-one (61), range six (6) west, at letter D on county surveyor's plat No. 124, running north 31 $\frac{60}{100}$ chains to a stone, letter C; thence east 17 $\frac{39}{100}$ chains to a stone, letter M; thence south to a stone, letter N, 16 $\frac{90}{100}$ chains; thence west to a stone 9 $\frac{04}{100}$ chains; thence south to a stone 14 $\frac{70}{100}$ chains; thence west to a stone, the place of commencement 8 $\frac{16}{100}$ chains, containing forty-two
47 acres more or less; to have and to hold the premises aforesaid with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in any wise appertaining unto the said

party of the second part and unto her heirs and assigns forever; the said James H. Skinner and Mattie C. Skinner hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of all encumbrances done or suffered by them or those under whom they claim, and that they will warrant and defend the title to the said premises unto the said parties of the second part and unto her heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES H. SKINNER. [SEAL.]
MATTIE C. SKINNER. [SEAL.]

[U. S. R. stamp, $5.00. J. H. S. Feb. 11, 1868.]

48 STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that on this eleventh day of February, A. D. 1868, before the undersigned, a notary public within and for the county of Lewis and State of Missouri, personally came James H. Skinner and Mattie C. Skinner, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned. And the said Mattie C. Skinner being by me first made acquainted with the contents of the said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion or undue influence of her said husband.

In testimony whereof I have hereto set my hand and affixed my official seal, at my office in La Grange, the day and year first above mentioned.

[SEAL.] THOMAS PRYCE,
Notary Public.

49 Filed for record February 24th, 1868.
THOS. B. JEFFRIES,
Recorder.
Per P. C. AGEE, *Deputy.*

STATE OF MISSOURI,
County of Lewis, ss:

I, Charles R. McGee, recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed from James H. Skinner to Sarah C. Williams, as the same appears of record in my office.

Witness my hand as recorder and the seal of my office. Done at office in Monticello, this 26th day of September, 1877.

CHAS. R. McGEE, *Clerk.*
Per *Deputy.*

Exhibit B, referred to in the foregoing amended bill, is in words and and figures following, to wit:

EXHIBIT B.

STATE OF MISSOURI,
County af Lewis, ss:

In the recorder's office.

Among other instruments of writing on record in said office is the following, in words and figures as follows, to wit:

50 Know all men by these presents that James H. Skinner and Mattie C. Skinner, his wife, of the city of La Grange, of the county of Lewis, in the State of Missouri, have this day, for and in consideration of the sum of four thousand eight hundred dollars, to the said James H. Skinner and Mattie C. Skinner in hand paid by Sarah C. Williams, of city of La Grange, of the county of Lewis, in the State of Missouri, granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Sarah C. Williams the following described tracts or parcels of land, situate in the county of Lewis, in the State of Missouri, that is to say: Commencing at the southwest corner of the southeast quarter of section (25) twenty-five, township (61) sixty-one, range (6) west, at letter D on county surveyor's plat No. 124, running north 31 $\frac{60}{100}$ chains to a stone, letter C; thence east 17 $\frac{39}{100}$ chains to a stone, letter M; thence south to a stone, letter N, 16 $\frac{90}{100}$ chains; thence west to a stone 9 $\frac{04}{100}$ chains; thence south to a stone 14 $\frac{705}{100}$ chains; thence west to the place of commencement
51 8 $\frac{16}{100}$ chains, containing forty-two acres, more or less. To have and to hold the premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said Sarah C. Williams, and her heirs and assigns forever, the said James H. Skinner & Mattie C. Skinner, parties of the first part, hereby covenanting to and with the said Sarah C. Williams, party of the second part, her heirs and assigns, for their heirs, executors, and administrators, to warrant and defend the title to the premises hereby conveyed against the lawful claims of any persons whatsoever.

In witness whereof we have hereunto subscribed our names and affixed our seals this thirteenth day of December, 1871. This deed is made to correct a deed made on the 11th day of February, eighteen hundred & sixty-eight, and recorded on the 24 day of February, 1868, in vol. 3, pages 391, 392, 392, in circuit clerk's office, in Lewis County, Mo.

JAMES H. SKINNER. [SEAL.]
MATTIE C. SKINNER. [SEAL.]

[U. S. revenue stamp, $5.00 *dollars*, cancelled.]

52 STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that James H. Skinner and Mattie C. Skinner, his wife, who are personally known to the undersigned, a notary public within and for said county, to be the same persons whose names are subscribed to the foregoing deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained; and the said Mattie C. Skinner being by me first made acquainted with the contents of said deed acknowledged, on an examination apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and notarial seal at my office in La Grange this thirteenth day of December, A. D. 1871.
[SEAL.] THOMAS PRYCE,

53 *Notary Public.*

Filed for record January 6th, A. D. 1872.
THOS. B. JEFFRIES,
Recorder.

STATE OF MISSOURI,
County of Lewis, ss:

I, Chas. R. McGee, recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed from James H. Skinner to Sarah C. Williams as the same appears of record in my office. Witness my hand as recorder, and the seal of my office. Done at office in Monticello this 26th day of September, 1877.
[SEAL.] CHAS. R. McGEE,
Clerk.

Said Exhibit C, referred to in the foregoing amended bill, is in words and figures following, to wit:

EXHIBIT C.

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that heretofore, to wit, on the 13th day of December, A. D. 1872, there was filed in the office of the clerk of the circuit court for Lewis County a petition, which petition is in the words and figures as follows, to wit:

54 STATE OF MISSOURI,
County of Lewis, ss:

THE FIRST NATIONAL BANK OF QUINCY, plaintiff,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams and Robert N. Blackwood, defendants.

In the Lewis County circuit court, January term, 1873.

Plaintiff avers that plaintiff is an association organized for the purpose of carrying on the business of banking, at the city of Quincy, in the State of Illinois, organized under an act of Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864.

Plaintiff states that defendants, by their promissory note herewith filed, dated Quincy, Ill., June 19th, 1871, promised, for value received, to pay to plaintiff, at their banking-house, the sum of three thou-
55 sand six hundred and forty eight & $\frac{36}{100}$ dollars sixty days after the date thereof, with interest at the rate of ten per cent. per annum, after maturity. Plaintiff says that defendants on the 6th day of February, 1872, paid the interest in full to that date; that the said note and

the remainder of the interest are yet due plaintiff, for which pl'ff asks judgment.

J. B. ALVERSON,
Att'y for Pl'ff.

Attached to and a part of said petition is a note in words and figures as follows, to wit:

$3,648.36. QUINCY, ILL., *June 19th*, 1871.

Sixty days after date, we, or either of us, promise to pay to the First National Bank of Quincy, or order, at their banking-house, thirty-six hundred & forty-eight $\frac{36}{100}$ dollars, for value received, with interest at the rate of ten per cent. per annum, from maturity till paid.

J. R. HARRIS & Co.
G. H. SIMPSON.
W. Y. WILLIAMS.
R. N. BLACKWOOD.

Post-office:
Renewal ⁄⁄
Aug. 21st.

[U. S. rev. stamp, 1.85—cancelled.]

56 On the back of said note appears the following endorsement, to wit:

Received, Quincy, Feb. 6, '72, interest in full to date.

And afterwards, to wit, on the 14th day of December, A. D. 1872, there was issued from the clerk of the circuit court for Lewis County a summons to the sheriff of Lewis County, Missouri, in words and figures as follows, to wit.

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court.

The State of Missouri to the sheriff of Lewis County, greeting:

We command you to summons Jacob R. Harris, George H. Simpson, William Y. Williams, Robert N. Blackwood, if they be found in your county, to appear before our circuit court to be holden within and for the county of Lewis at the court-house in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in January next, A. D. 1873, then and
57 there before the judge of our said court, to answer the petition of the First National Bank of Quincy (a certified copy of which said petition is hereunto annexed), and have you then and there this writ, with the return of action thereupon.

Witness my hand as clerk of our said court, and the seal thereof. Done at office in Monticello, in the county aforesaid, on the 13th day of Dec., A. D. 1872.

[SEAL.] THOS. B. JEFFRIES, *Clerk*,
By P. C. AGEE, *Deputy Clerk.*

Upon which said summons appears the return of the sheriff, to wit:

Executed the within writ in the county of Lewis, on the 19th day of December, A. D. 1872, by delivering a copy of same with the accompanying petition to George H. Simpson, and by delivering a copy of

this writ to William Y. Williams & Robert N. Blackwood; Jacob R. Harris not found in Lewis County, Missouri.

Fee, $3.50.

W. G. ALLEN,
Sheriff Lewis County, Mo.,
By O. K. CALDWELL,
Deputy.

58 And afterwards, to wit, on the day and year last aforesaid, there was issued from the office of the clerk of the circuit court a summons directed to the sheriff of St. Louis County, which is in words and figures following, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court.

The State of Missouri to the sheriff of Saint Louis County, greeting:

We command you to summon Jacob R. Harris, if he be found in your county, to appear before our circuit court, to be holden within and for the county of Lewis, at the court-house in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in January next, A. D. 1873, then and there before the judge of our said court to answer the petition of the First National Bank of Quincy (a certified copy of which said petition is hereunto annexed). And have you then and there this writ, with the return of your action thereupon.

59 Witness my hand as clerk of our said court, and the seal thereof.

Done at office in Monticello, in the county aforesaid, on the 13th day of December, A. D. 1872.

[SEAL.] THOS. B. JEFFRIES, *Clerk.*

Upon which said summons appears the return of the sheriff, to wit: Executed the within writ in the county of St. Louis, on the 19th day of December, A. D. 1872, by delivering a copy of the writ and petition as furnished by the clerk to Jacob R. Harris.

$1.10.

PHILIP C. TAYLOR,
Sheriff St. Louis County, Mo.,
By A. J. KIMBER,
Deputy.

Afterwards, to wit, on the 6th day of January, A. D. 1873, at a circuit court continued and held at the court-house in the town of Monticello, Lewis County, it being the Jan'y term thereof, before the Hon. E. V. Wilson, judge, the following among other proceedings were had at the said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
vs.
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

60 At this day comes the defendants, George Simpson et al., and file notice to rule plaintiff to give security for the costs of this suit.

Which said motion is in words and figures as follows, to wit:

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, & ROBERT N. BLACKWOOD.

Now come the def'ts, George H. Simpson, William Y. Williams, & Robert N. Blackwood, and move the court to require the plaintiff to file security for costs in this action, and for cause of such motion says that the said plaintiff is a non-resident of the State of Missouri.

JOHN FOSTER,
Att'y for Def'ts above named.

And afterwards, to wit, on the 7th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

61 At this day comes said plaintiff, by its attorney, and files bond of Iverson B. Alverson as security for costs, which said bond is approved.

Which said bond is in words and figures as follows, to wit:

In the circuit court Lewis County, Missouri.

FIRST NATIONAL BANK OF QUINCY, PL'FF,
vs.
JACOB R. HARRIS ET AL., DEFENDANTS.

I, I. B. Alverson, a resident of the State of Missouri, do hereby acknowledge myself bound to pay all the costs which have accrued or may accrue in the above entitled cause. This 7th day of Jan'y, 1873.

I. B. ALVERSON.

And afterwards, to wit, on the day and year last aforesaid, the following among other proceedings were had at said term as follows, to wit:

FIRST NATIONAL BANK QUINCY, PL'FF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day come the defendants, George H. Simpson, William Y. Williams, and Robert N. Blackwood, and file their answer to
62 plaintiff's petition, which said answer is in words and figures as follows, to wit:

Lewis cir. c't, Jan. term, 1873.

FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS.

Now come the defendants, George H. Simpson, William Y. Williams,

and Robert N. Blackwood, and, for their answer to the petition of the pl'ff, say that they deny that they are indebted to the plaintiff in the said sum of money evidenced by said note filed with said pl'ff's petition or any other sum whatsoever; deny that said plaintiff is an association organized under the laws of the United States, as set forth in said petition; and that def'ts, for further answer to said petition answering, say that they admit that they executed the said note filed in this action, but expressly aver that the same had been fully paid off and satisfied before the commencement of this action. And these de-
63 fendants expressly charge the fact to be that these defendants are mere accommodation of said note filed in this action, and signed the same for the accommodation of the said firm of J. R. Harris & Co., who at the date thereof were engaged in the manufacture of tobacco at the city of La Grange, in the State of Missouri; that after the maturity of said note and at divers times before and after that date the said firm of J. R. Harris & Co. forwarded to said plaintiff at Quincy, Illinois, large sums of money to be applied in payment of said note and other notes then held by said plaintiff, to wit, about the sum of thirty thousand dollars, that sum being amply sufficient to pay off and fully satisfy all of said notes, including said note filed in this action; that at the time said monies were so transmitted to said plaintiff the said plaintiff held or pretended to hold certain demands against J. R. Harris, who then was a member of said firm of J. R. Harris & Co. afore-
64 said, to a large amount, to wit, to the sum of twenty thousand dollars; that upon the receipt of said monies as aforesaid from said firm of J. R. Harris & Co., said plaintiff concluding and confederating with said J. R. Harris and well knowing that said monies were not the individual property of the said J. R. Harris, but wilfully and fraudulently contriving how to cheat and defraud the said firm of J. R. Harris & Co. and these defendants, their sureties, out of said monies, fraudulently applied twenty thousand dollars of and out from said monies to the payment of said individual indebtedness of J. R. Harris, instead of applying same to the payment of the note filed in this action and other notes of said firm. Wherefore these defendants ask that so much of said sum of twenty thousand dollars so fraudulently appropriated by said plaintiff may be applied to the payment of the note filed in this action as may be necessary to fully satisfy the same; and that
65 said note be delivered up to def'ts for cancellation; and further, that def'ts have judgment for costs.

JOHN FOSTER,
Att'y for Def't.

And afterwards, to wit, on the 8th day of January, A. D. 1873, at a circuit court continued and held as aforesaid the following among other proceedings were had at said term as follows, to wit:

FIRST NATIONAL BANK QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day come said parties by their attorneys, and thereupon on motion the defendants withdraw their motion for costs, and on the further motion and by agreement this cause is continued until the next term of this court.

And afterwards, to wit, on the 5th day of May, A. D. 1873, at a circuit court continued and held as aforesaid the following among other proceedings were had at said term as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

66 At this day comes said plaintiff by its attorney and files reply to defendants' answer. Which said reply is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
JACOB R. HARRIS, GEO. H. SIMPSON, WILLIAM Y. Williams, & Robert N. Blackwood.
In the circuit court, Lewis County.

Plaintiff comes and replies to the answer of defendants and says that they are indebted to the plaintiff in the said sum of money evidenced by said note filed with pl'ff's petition, and avers that pl'ff is an association organized under the laws of the United States as set forth in said petition. And pl'ff further replies and denies that the said note had been fully paid off and satisfied before the commencement of this action, and denies that any part thereof has been paid except as stated in said petition. And pl'ff denies that these defendants are accommoda-
67 tion makers of said note, and says that these defendants did at that date compose the firm of J. R. Harris & Co.

Plaintiff, further replying, denies that defendants after the maturity of said note and at divers times before and after that date that the said firm of J. R. Harris & Co. forwarded to said plaintiff at Quincy, Ill., large sums of money to be applied in payment of said note & other notes, about the sum of thirty thousand dollars or any other sum except as stated in pl'ff's petition, and denies that defendants paid any monies to pl'ff on the note in suit other than as heretofore stated, and plaintiff denies that monies of these def'ts so transmitted to him were applied on the individual indebt'ness of J. R. Harris to the sum of twenty thousand dollars or any sum whatever. Plaintiff, further replying, denies that there was any collusion between pl'ff and J. R. Harris to cheat and defraud these defendants of said monies and fraudulently apply $20,000 to the payment of said individual indebtedness of J. R. Harris,
68 instead of applying the same to the payment of the note filed in this action & other notes of said firm.

Plaintiff, further replying, says that the note in suit has been credited by all moneys paid by defendants therein, and that the balance and interest thereon is yet due pl'ff, for which he asks judgment.

J. B. ALVERSON,
Att'y for Pl'ff.

Afterwards, to wit, on the 10th day of May, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. Williams, and Robert N. Blackwood, defendants.
On note.

At this day come said parties by their attorneys, and this cause now coming on to be heard, on motion the same is submitted to the court,

and the court finds for said plaintiff the sum of four thousand one hundred and ten dollars and 48 cents. It is therefore considered by
69 the court that said plaintiff do have and recover of defendant the sum of four thousand one hundred and ten dollars and 48 cents, with ten per cent. interest thereon, together with her costs and charges herein laid out and expended, and that execution issue therefor.

Afterwards, to wit, on the 22nd day of December, 1874, there was issued from the office of the clerk of the circuit court for Lewis County an execution, which said execution is as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court of said county.

The State of Missouri to the sheriff of Lewis county, greeting:

Whereas the First National Bank of Quincy, on the 10th day of May, in the year of our Lord eighteen hundred and seventy-three, at our circuit court for said county of Lewis, recovered against Jacob R. Harris, George H. Simpson, William Y. Williams, and Robert N. Blackwood the sum of four thousand one hundred and ten dollars and 48
70 cents, and also plaintiff's costs, which have been taxed the sum of twenty-one dollars and 84 cents: These are therefore to command you that of the goods and chattels, lands and tenements of the said Jacob R. Harris, George H. Simpson, William Y. Williams, and Robert N. Blackwood you cause to be made the debt and costs aforesaid, and that you have the same before the judge of our said court on the first Monday in March next, to satisfy said debt and costs, and have you then and there this writ, certifying how you have executed the same.

Witness, Thos. B. Jeffries, clerk of our said court, with the seal thereof. Done at office in Monticello, in the county aforesaid, on this 22d day of Dec., A. D. 1874.

[SEAL.] THOS. B. JEFFRIES, *Clerk*,
By P. C. AGEE, *D. C.*

Received by me this 22nd day of December, 1874.
W. M. MOORE, *Sheriff.*

Executed the within writ in the county of Lewis, on the 10th day of February, 1875, by levying upon and seizing, as the property of the
71 defendants, William Y. Williams and Robert N. Blackwood, the following-described real estate, to wit: Commencing at the southwest corner of the southeast quarter of section 25, township 61, range 6 west, at letter "D" on county surveyor's report No. 124, running north $31\frac{60}{100}$ chains to a stone, letter "C;" thence east $17\frac{39}{100}$ chains to a stone, letter "M;" thence south to a stone, letter "N," $16\frac{90}{100}$ chains; thence west to a stone $9\frac{4}{100}$ chains; thence south to a stone $14\frac{05}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all being the property of the said defendant William Y. Williams; also the property of the defendant Robert N. Blackwood, to wit, lots No. 6 and 7, in block No. 6, in Wright and Shropshire's addition to La Grange, all lying and being in the county of Lewis and State of Missouri.

W. M. MOORE,
Sheriff of Lewis County, Mo.

I, W. M. Moore, sheriff of Lewis County, Missouri, hereby certify that in compliance with the command of the within execution, having,
72 prior to the day of sale hereinafter mentioned, given at least twenty days' notice of the time, terms, and place of sale, together with a description of the real estate to be sold, and where situated, as the law directs, by publishing notices in the La Grange Democrat, a newspaper published weekly regularly in my said county, I did, agreeably to said notices, on the tenth day of March, 1875, between the hours of nine in the forenoon and five in the afternoon of that day, at the court-house in the town of Monticello, in said county, and while the circuit court of said county was in session, expose to sale at public vendue, to the highest bidder, for cash, under this and three other executions, viz, two in favor of the First National Bank of Quincy, and one in favour of the La Grange Savings Bank, all the right, title, and interest of the within-named defendant, William Y. Williams and Robert N. Blackwood, of, in, and to the real estate hereinafter described; and Uri S. Penfield, in trust for the use and benefit of the execution creditors, being the highest bidder for the real estate, to wit, commencing at the south west corner
73 of the southeast quarter of sec. 25, township 61, range 6 west, at letter "D" on county surveyor's plat No. 124, running north $31\frac{60}{100}$ ch's to a stone, letter "C;" thence east $17\frac{33}{100}$ ch's to a stone, letter "M;" thence south to a stone letter N, $16\frac{90}{100}$ chains; thence west to a stone, $9\frac{4}{100}$ ch's; thence south to a stone $14\frac{70\frac{5}{8}}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all being the property of said defendant William Y. Williams, all in Lewis County, Mo; also lots No. 6 & 7 in bl'k 6, Wright & Shropshire's addition to the city of La Grange, Mo., being the property of said defendant Robert H. Blackwood; and Uri S. Penfield, having bid therefor the sum of $25.00 for the 42-acre tract of the defendant W. Y. Williams, and five dollars each of lots 6 & 7, block 6, La Grange, property of def't Blackwood, and Uri S. Penfield became the purchaser thereof, and the same was stricken off and sold to Uri S. Penfield in trust for execution creditors for that sum, of which I have applied ($35) thirty-five dollars to the payment of the costs in this and other
74 executions. I therefore return the writ of execution not satisfied.

W. M. MOORE,
Sheriff of Lewis Co., Missouri.

STATE OF MISSOURI,
County of Lewis, ss:

I, Chas. R. McGee, clerk of the circuit court in and for the county of Lewis aforesaid, hereby certify that the foregoing pages contain a full, true, and complete copy of the records and proceedings had in said court in the above-entitled cause, as fully as the same appears of record and on file in my said office.

Witness my hand as clerk and the seal of said court. Done at office in Monticello, on the 26th day of September, A. D. 1877.

[SEAL.] CHAS. R. McGEE, *Clerk.*

Said Exhibit D, referred to in the foregoing amended bill, is in words and figures following, to wit:

EXHIBIT D.

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that heretofore, to wit, on the 13th day of Decem-

ber, A. D. 1872, there was filed in the office of the clerk of the
75 circuit court of Lewis County a petition, which petition is in the words and figures as follows, to wit:

STATE OF MISSOURI,
Lewis County, ss :

In the Lewis County circuit court.

THE FIRST NATIONAL BANK OF QUINCY, plaintiff,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams, Joseph A. Hay, and John Sisler, defendants.

Plaintiff avers that the plaintiff herein is an association organized for the purpose of carrying on the business of banking at the city of Quincy, in the State of Illinois, organized under an act of Congress of the United States entitled an act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, approved June 3d, 1864.

Plaintiff states that defendants, by their promissory note herewith filed, dated Quincy, Ill., July 19th, 1871, promised, for value received, to pay to plaintiffs, at their banking house, the sum of five thousand dollars, sixty days after the date thereof, with ten per cent. interest after
76 maturity. Plaintiff says that defendant on the 6th day of February, 1872, paid the interest in full to that date, and also on said date last aforesaid defendants paid on said note eleven hundred and ninety-six and $\frac{85}{100}$ dollars.

That the remainder of said note and interest as above stated are due plaintiff, and for which pl'ff asks judgment.

I. B. ALVERSON,
Att'y for Pl'ff.

Attached to and a part of said petition is a note as follows, to wit:

$5,000.00.] QUINCY, ILL., *July 19th*, 1871.

Sixty days after date we, or either of us, promise to pay to the First National Bank of Quincy, or order, at their banking-house, five thousand dollars for value received, with interest at the rate of ten per cent. per annum from date till paid.

J. R. HARRIS & CO.
G. H. SIMPSON.
W. Y. WILLIAMS.
J. A. HAY.
JOHN SISLER.

Post-office:
Renewal Sept. 20th.
[$2.50 revenue stamp, cancelled.]

Upon the back of said note appears the following endorsement, to wit:

Received, Quincy, Feb'y 6, '72, interest in full to date. Received on principal this note Feb'y 6, '72, eleven hundred ninety-six & $\frac{85}{100}$
77 dollars ($1,196.85).

And afterwards, to wit, on the 13th day of December, A. D. 1872, there was issued from the clerk of the circuit court for Lewis County a summons to the sheriff, Lewis County, Missouri, in words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis:

In the circuit court.

The State of Missouri to the sheriff of Lewis County, greeting:

We command you to summon Jacob R. Harris, George H. Simpson, William R. Williams, Joseph A. Hay, and John Sisler, if they be found in your county, to appear before our circuit court to be holden within and for the county of Lewis, at the court-house, in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in January next, A. D. 1873, then and there before the judge of our said court to answer the petition of the First National Bank of Quincy (a certified copy of which said petition is hereunto annexed). And have you then and there this writ with the return of your action thereupon.

78 Witness my hand as clerk of our said court and the seal thereof. Done at office, in Monticello, in the county aforesaid, on this 13th day of December, A. D. 1872.

[SEAL.] THOS. B. JEFFRIES, *Clerk.*

Upon which said writ appears the following endorsement, to wit: Executed the within writ, in the county of Lewis, on the 19th day of December, A. D. 1872, by delivering a copy of same, with the accompanying petition, to William Y. Williams, and by delivering a copy of this writ to Joseph A. Hay and George H. Simpson, and by leaving a copy of this writ at the usual place of abode of John Sisler, with a member of the family over the age of fifteen years. Jacob R. Harris not found in this county.

W. G. ALLEN,
Sheriff Lewis County, Mo.,
By O. K. CALDWELL,
Deputy.

And afterwards, to wit, on the 13th day of December, A. D. 1872, there was a summons issued from the office of the clerk of the circuit court directed to the sheriff of St. Louis County, in the words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis:

In the circuit court.

79 The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon Jacob R. Harris, if he be found in your county, to appear before our circuit court to be holden within and for the county of Lewis, at the court-house, in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held

on the first Monday in January next, A. D. 1873, then and there before the judge of our said court to answer the petition of the First National Bank of Quincy (a certified copy of which said petition is hereunto annexed). And have you then and there this writ with the return of your action thereupon.

Witness my hand as clerk of our said court and the seal thereof. Done at office, in Monticello, in the county aforesaid, on the 13th day of December, A. D. 1872.

[SEAL.]

THOS. B. JEFFRIES, *Clerk*,
By P. C. AGEE, *Deputy Clerk.*

Upon which said writ appears the return of the sheriff, to wit:

Executed the within writ in the county of St. Louis, on the 19th
80 day of December, A. D. 1872, by delivering a copy of the writ and petition as furnished by the clerk to Jacob R. Harris.

PHILIP C. TAYLOR,
Sheriff St. Louis Co., Mo.,
By A. J. KINILIN, *Deputy.*

And afterwards, to wit, on the 6th day of January, A. D. 1873, at a circuit court continued and held at the court-house, in the town of Monticello, for Lewis County, it being the Jan'y term thereof, before the Hon. E. V. Wilson, judge, The following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day come the defendants, by George H. Simpson et al., and file motion to rule plaintiffs to give security for cost, which motion is as follows, to wit:

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams, Joseph A. Hay, and John Sisler.

Now come the defendants Simpson, Williams, Hay, & Sisler
81 and move the court to require the plaintiff to give security for costs in this action, for the reason that said plaintiff is not a resident of the State of Missouri.

JOHN FOSTER,
Att'y for Def'ts.

And afterwards, to wit, on the 7th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had, to wit:

FIRST NATIONAL BANK OF QUINCY,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes said plaintiff, by its attorney, and files bond of I. B. Alverson as security for cost, which said bond is by the court approved, which said bond is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
vs.
JACOB R. HARRIS ET AL., DEF'TS.

In circuit court, Lewis County, Missouri.

I, I. B. Alverson, a resident of the State of Missouri, do hereby acknowledge myself bound to pay all costs which have accrued, or may accrue, in the above-entitled cause, this 7th day of Jan'y, 1873.

I. B. ALVERSON.

82 And afterwards, to wit, on the day and year last aforesaid, at a circuit court continued and held as aforesaid, the following among other proceedings, were had, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day come Joseph A. Hay and John Sisler and file their separate answer to plaintiff's petition, and also come George H. Simpson et al. and file their separate answer to plaintiff's petition.

Which said answers are as follows, to wit:

Answer of Hay & Sisler.

In Lewis County circuit court. January term, 1873.

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams, Joseph A. Hay, and John Sisler.

Now come the defendants, Joseph A. Hay and John Sisler, and for a separate and further answer to the petition of the said plaintiff say that at the time they signed and executed said promissory note filed in this action the said plaintiff and the said J. R. Harris represented to these defendants that the said note was merely in renewal of a
83 certain other note which these defendants had before that time executed as accommodation makers for said firm of J. R. Harris & Co., and which said note bore date June 3d, 1871, and which plaintiffs then and there represented to be ordered: that to induce these defendants to sign said note said plaintiffs had written upon the face of said note the word renewed; that relying upon said representation so made aforesaid, these defendants were induced to execute said note, and did sign the same, supposing it to be in renewal of their former note, hereinbefore set forth and described. but these defendants charge the fact to be that said representations were wholly and entirely false and untrue; that said former note was not then overdue; that said note so executed then and there was not a renewal note in lieu of said note bearing date June 3d, 1871; and that said word renewal, to wit, upon the face of said note, was a mere badge of fraud to decoy and in-
84 veigle these defendants into the execution of said note; and that said false and fraudulent representations formed a material inducement to these deft's to execute said note, and had they not believed

them to be true they would not have executed the said note; and these deft's aver that through the collusion of said plaintiffs with the said J. R. Harris the said note of June 3d, 1871, was not taken up, but still remains in the possession of the plaintiff. Wherefore deft's ask that said note be delivered up for cancellation, and that they have judgment for costs.

JOHN FOSTER,
Att'y for Deft's Hay & Sisler.

Lewis circuit court. Jan'y term, 1873.

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM R. WILLIAMS, JOSEPH A. HAY, and JOHN SISLER.

Now come the deft's George H. Simpson, William Y. Williams, Joseph A. Hay, and John Sisler, and for answer to the petition of the plaintiff filed in this action say
85 that they deny that plaintiff is an association organized under the laws of the United States, as set forth in plaintiff's petition. And these defendants answering say that they admit they executed the said promissory note mentioned in said plaintiff's petition, but these def'ts expressly deny that they are indebted to the pl'ff in the said sum of money evidenced by said note filed with said pl'ff's petition, or in any other sum whatever. For these defendants charge the fact to be that they are mere accommodation makers of said note filed in this action, and signed the same for the accommodation of the said firm of J. R. Harris & Co., who at the date of said note were engaged in the manufacture of tobacco at city of La Grange, in the State of Missouri. That at the maturity of said note and at divers times before and after that date the said firm of J. R. Harris & Co. forwarded to said plaintiff at Quincy, Illinois, large sums of money to be applied in payment of said note and other notes then held by said plaintiff against said firm, to wit,
86 about the sum of thirty thousand dollars, that sum being amply sufficient to pay off and fully satisfy all of said notes, including the note filed in this action. That at the time said monies were transmitted to said plaintiff the said plaintiff held or pretended to hold certain demands against one J. R. Harris & Co, at that time such claims amounting to the full sum of twenty thousand dollars. That upon the receipt of said monies as aforesaid from said firm of J. R. Harris & Co., said plaintiffs' colluding and confederating with said J. R. Harris, and well knowing that said monies were not the individual property of the said J. R. Harris, but wilfully and fraudulently contriving how to cheat and defraud the said firm of J. R. Harris & Co., and that defendants, their sureties, out of said monies, fraudulently applied twenty thousand dollars of and out from said monies the payment of said individual indebtedness of J. R. Harris instead of applying the same to the payment
87 of the note filed in this action and other notes of said firm held by pl'ff as aforesaid. Wherefore, these def'ts ask that so much of said sum of twenty thousand dollars so fraudulently appropriated by said pl'ff may be applied to the payment of the note filed in this action as may be necessary to fullys atisfy the same, and that said note be delivered up for cancellation. And further that def'ts have judgment for costs.

JOHN FOSTER,
Att'y for Def't.

And afterwards, to wit, on the 8th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had, to wit.

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day come said parties, by their attorneys, and thereupon the *the* defendants withdraw their motion for costs, and on the further motion and by agreement of said parties this cause is continued until the next term of this court.

And afterwards, to wit, on the 11th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following
88 proceedings were had, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB HARRIS ET AL., DEFENDANTS.

At this day come the parties, by their attorneys, and on motion leave is granted the plaintiff to file reply herein thirty days before the next term of this court, until which time this cause is continued.

And afterwards, to wit, on the 5th day of May, A. D. 1873, at a circuit court continued and held at the court-house, in the town of Monticello, for Lewis County, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes said plaintiff, by its attorney, and files reply to defendants' answer; which reply is in words and figures as follows, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. Williams, Joseph A. Hay, and John Sisler, defendants.

89 In the Lewis County circuit court.

Plaintiff comes and replies to the separate answer of Hay and Sisler and says that it is not true that at the time they signed and executed said promissory note filed in this action the said pl'ff and the said J. R. Harris represented to these def'ts that the said note was merely a renewal of a certain other note which these defendants had before that time executed as accommodation makers for said firm of J. R. Harris & Co., which said note bore date June 3d, 1871, and that pl'ff then and there represented to be overdue; that to induce these defendants to sign said note said pl'ff had written upon the face of said note the word renewal. Plaintiff says that the above allegations and averments of defendant are all false; that no inducements were held out or offered by plaintiff

to induce defendants to sign said note. Plaintiff further replies to defendants' answer, and says it is not true that these defendants were induced to execute said note, and did sign the same supposing
90 it to be in renewal of their former note hereinbefore set forth and described, and denies that there was any fraudulent representations made or inducements offered to induce defendants to sign said note, and plaintiff avers that it was a renewal note in lieu of one for said sum of $ due plaintiff and then overdue from defendants. Plaintiff further replies and denies that the word renewal written upon the face of said note so written to defraud or decoy defendants into the execution of said notes or that it promised a material inducement to defendants to execute said note; and pl'ff, for further reply, denies that there was any collusion between pl'ff and def't by J. R. Harris in this transaction, and denies that the note for which the one in suit was given as renewal still remains in the possession of the pl'ff, and says it was taken up by def'ts at the time and date said renewal was so made.

Plaintiff having now fully replied to the separate answer of def'ts Hay and Sisler, avers that the balance on said note and interest as stated in plaintiff's petition is yet due, for which plaintiff asks judgment.

91 I. B. ALVERSON,
Att'y for Pl'ff.

Afterwards, to wit, at a circuit court continued and held on the day and year last aforesaid, the following among other proceedings were had, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes said plaintiff, by its attorney, and files reply to separate answer of J. R Harris et al., which said reply is in words and figures as follows, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLiam Y. Williams, Joseph A. Hay, and John Sisler, defendants.

In Lewis County circuit court.

Now comes the plaintiff, and for reply to the separate answer of defendants Geo. H. Simpson, William Y. Williams, Joseph A. Hay, and John Sisler, and aver that pl'ff is an association organization under the laws of the United States, as set forth in pl'ff's petition. Plaintiff, further replying, says that defendants are indebted to pl'ff in said sum of
92 money evidenced by said note filed with pl'ff's petition, and pl'ff denies that the defendants are mere accommodation makers of said note filed in this action, and denies that they, defendants, signed the same for the mere accommodation of the said firm of J. R. Harris & Co., and says that the note in suit is the joint note of all of defendants. Plaintiff further replies and says it is not true that at the maturity of said note and at divers times before and after that date the said firm of J. R. Harris & Co. forwarded to said plaintiff at Quincy, Illinois, large sums of money to be applied in payment of said notes and other notes

And afterwards, to wit, on the 8th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had, to wit.

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day come said parties, by their attorneys, and thereupon the *the* defendants withdraw their motion for costs, and on the further motion and by agreement of said parties this cause is continued until the next term of this court.

And afterwards, to wit, on the 11th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following
88 proceedings were had, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB HARRIS ET AL., DEFENDANTS.

At this day come the parties, by their attorneys, and on motion leave is granted the plaintiff to file reply herein thirty days before the next term of this court, until which time this cause is continued.

And afterwards, to wit, on the 5th day of May, A. D. 1873, at a circuit court continued and held at the court-house, in the town of Monticello, for Lewis County, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes said plaintiff, by its attorney, and files reply to defendants' answer; which reply is in words and figures as follows, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. Williams, Joseph A. Hay, and John Sisler, defendants.

89 In the Lewis County circuit court.

Plaintiff comes and replies to the separate answer of Hay and Sisler and says that it is not true that at the time they signed and executed said promissory note filed in this action the said pl'ff and the said J. R. Harris represented to these def'ts that the said note was merely a renewal of a certain other note which these defendants had before that time executed as accommodation makers for said firm of J. R. Harris & Co., which said note bore date June 3d, 1871, and that pl'ff then and there represented to be overdue; that to induce these defendants to sign said note said pl'ff had written upon the face of said note the word renewal. Plaintiff says that the above allegations and averments of defendant are all false; that no inducements were held out or offered by plaintiff

to induce defendants to sign said note. Plaintiff further replies to defendants' answer, and says it is not true that these defendants were induced to execute said note, and did sign the same supposing
90 it to be in renewal of their former note hereinbefore set forth and described, and denies that there was any fraudulent representations made or inducements offered to induce defendants to sign said note, and plaintiff avers that it was a renewal note in lieu of one for said sum of $ due plaintiff and then overdue from defendants. Plaintiff further replies and denies that the word renewal written upon the face of said note so written to defraud or decoy defendants into the execution of said notes or that it promised a material inducement to defendants to execute said note; and pl'ff, for further reply, denies that there was any collusion between pl'ff and def't by J. R. Harris in this transaction, and denies that the note for which the one in suit was given as renewal still remains in the possession of the pl'ff, and says it was taken up by def'ts at the time and date said renewal was so made.

Plaintiff having now fully replied to the separate answer of def'ts Hay and Sisler, avers that the balance on said note and interest as stated in plaintiff's petition is yet due, for which plaintiff asks judgment.

91 I. B. ALVERSON,
Att'y for Pl'ff.

Afterwards, to wit, at a circuit court continued and held on the day and year last aforesaid, the following among other proceedings were had, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes said plaintiff, by its attorney, and files reply to separate answer of J. R Harris et al., which said reply is in words and figures as follows, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLiam Y. Williams, Joseph A. Hay, and John Sisler, defendants.

In Lewis County circuit court.

Now comes the plaintiff, and for reply to the separate answer of defendants Geo. H. Simpson, William Y. Williams, Joseph A. Hay, and John Sisler, and aver that pl'ff is an association organi*zation* under the laws of the United States, as set forth in pl'ff's petition. Plaintiff, further replying, says that defendants are indebted to pl'ff in said sum of
92 money evidenced by said note filed with pl'ff's petition, and pl'ff denies that the defendants are mere accommodation makers of said note filed in this action, and denies that they, defendants, signed the same for the mere accommodation of the said firm of J. R. Harris & Co., and says that the note in suit is the joint note of all of defendants. Plaintiff further replies and says it is not true that at the maturity of said note and at divers times before and after that date the said firm of J. R. Harris & Co. forwarded to said plaintiff at Quincy, Illinois, large sums of money to be applied in payment of said notes and other notes

then held by said plaintiffs against said firm, viz, the sum of thirty thousand dollars, or that they paid any other sum other than the sum credited on said note, and pl'ff denies that the sum of money thus paid was amply sufficient to pay off and fully satisfy all of said notes, including the note filed in this action.

Plaintiff, further replying to answer of defendants, denies receiving the monies above referred to from said firm of J. R. Harris & Co., and
93 denies that pl'ffs colluded and confederated with said J. R. Harris & Co., wilfully and fraudulently contriving to cheat and defraud the said firm of J. R. Harris & Co. and these defendants, their sureties, out of said monies, fraudulently applied twenty thousand dollars of, out, and from said monies to the payment of said individual indebtedness of J. R. Harris, instead of applying the same to the payment of the note filed in this action and other notes of said firm held by pl'ff as aforesaid.

Plaintiff, for further reply, denies that any sum or sums of money whatever have been received by pl'ff from defendants to be applied on the note in suit other than that credited thereon. Plaintiff avers that the balance on note in suit, and the interest as stated in pl'ff's petition, are yet due, and for which pl'ff asks judgment.

I. B. ALVERSON,
Att'y for Pl'ff.

Afterwards, to wit, on the 10th day of May, A. D. 1873, at a circuit court continued and held as aforesaid, the following, among other proceedings were had at said term, to wit:

94 FIRST NATIONAL BANK OF QUINCY, plaintiff,
against
JACOB R. HARRIS ET AL, DEFENDANTS.

At this day come said parties, by their attorneys, and, on motion, this cause is continued on the application of defendants, and at defendants' cost, on account of absence of witnesses at the defendants' cost. It is therefore considered by the court that the plaintiff do have and recover of the defendants the costs and charges herein expended at this term of the court, and that she have execution therefor.

Afterwards, to wit, on the 5th day of September, A. D. 1875, at a circuit court continued and held at the court-house, in the town of Monticello, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day come the parties, by their attorneys, and, on motion, leave is granted said defendant John Sisler to file amended answer, which said amended answer is filed.

95 Which said answer is as follows, to wit:

In the Lewis County circuit court, Mo.

THE 1ST NATIONAL BANK OF QUINCY, PLAINTIFF,
vs.
J. R. HARRIS, GEORGE H. SIMPSON, JOHN SISLER AND OTHERS, DEFENDANTS.

The separate answer of def't Sisler.

The defendant Sisler, for amended answer to pl'ff's petition, admits the execution of the note sued on; but says the same has been fully paid off and discharged.

DAY & BLAIR,
Att'ys for Def't.

Afterwards, to wit, on the day and year last aforesaid, the following, among other proceedings were had at said time, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes the plaintiff, by its attorney, and files reply to defendant John Sisler's amended answer.

Which said reply is in words and figures as follows, to wit:

In the Lewis County circuit court:

THE 1ST NATIONAL BANK OF QUINCY, PL'FF,
vs.
J. R. HARRIS ET AL., DEF'TS.

96 The plaintiff comes and replies to the separate amended answer of defendant Sislers. Plaintiff denies that the note sued on has been fully paid off and discharged, and says that the same is yet due plaintiff.

ANDERSON & ALVERSON,
Att'ys for Pl'ff.

Afterwards, to wit, on the 6th day of September, A. D. 1873, at a circuit court continued and held as aforesaid, the following proceedings, among others, were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
JACOB R. HARRIS ET AL., DEF'TS.

At this day come said parties, by their attorneys, and thereupon the defendant John Sisler files his 2nd application for a continuance, and this cause is continued upon said application until the next term of this court, at the cost of defendant John Sisler. It is therefore considered by the court that the plaintiff do have and recover of defendant John Sisler their costs and charges herein laid out and expended, and that execution issue therefor.

97 Afterwards, to wit, on the 5th day of March, A. D. 1874, at a circuit court continued and held as aforesaid, the following among other proceedings was had at said term, to wit:

THE FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
JACOB R. HARRIS ET AL., DEF'TS.

At this day comes said parties, by their attorneys, and on motion of plaintiff this cause is dismissed as to the defendants George H. Simpson and Joseph A. Hay; and this cause now coming on to be heard, and neither party demanding a jury, on motion the same is, by agreement, submitted to the court; and the court finds for the plaintiff for the debt and damages the sum of four thousand five hundred and ninety-one dollars and twenty-seven cents. It is therefore considered by the court that plaintiff do have and recover of the defendants Jacob R. Harris, William Y. Williams, and John Sisler the sum of four thousand five hundred and ninety-one dollars and twenty-seven cents for its debt and damages, with interest thereon at the rate of ten per cent. per
98 annum, together with costs, and that execution issue therefor.

Afterwards, to wit, on the 22nd day of December, A. D. 1874, there was issued from the office of the clerk of the circuit court an execution upon said judgment, which said execution is as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court of said county.

The State of Missouri to the sheriff of Lewis County, greeting:

Whereas the First National Bank of Quincy, on the 5th day of March, in the year of our Lord eighteen hundred and seventy-four, at our circuit court for said county of Lewis, recovered against Jacob R. Harris, William Y. Williams, and John Sisler the sum of four thousand five hundred and ninety-one dollars and twenty-seven cents, and plaintiff's costs, which have been taxed the sum of thirty-four dollars and 90 cents. These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Jacob R. Harris, William Y. Will-
99 iams, and John Sisler you cause to be made the debt and costs. And have you then and there this writ, certifying how you have executed the same.

Witness, Thos. B. Jeffries, clerk of our said court, with the seal thereof. Done at office in Monticello, in the county aforesaid, on this 22nd day of Dec., A. D. 1874.

[SEAL.] THOS. B. JEFFRIES, *Clerk*,
By P. C. AGEE, *D. C.*

Upon said execution appears the levy and report of sale of real estate made by the sheriff of Lewis County, Missouri, as follows:

Executed the within writ in Lewis County on the 10th day of Feb'y, 1875, by levying upon and seizing as the property of the defendant William Y. Williams of, in, and to the following-described real estate, to wit, 42 acres of real estate, commencing at the southwest corner of the southeast quarter of section 25, township 61, range 6 west, at letter "D" on county surveyor's plat No. 124, running north $31\frac{60}{100}$ chains to a stone,

letter "C;" thence east $17\frac{39}{100}$ chains to a stone, letter "M;" thence south to a stone, letter "N" $16\frac{90}{100}$ chains; thence west to a stone $9\frac{4}{100}$
100 chains; thence south to a stone $14\frac{08}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all lying and being in Lewis County, Missouri.

W. M. MOORE,
Sheriff of Lewis County, Missouri.

I, W. M. Moore, sheriff of Lewis County, Missouri, hereby certify that in compliance with the command of the within execution, having, prior to the day of sale hereinafter mentioned, given at least twenty days' notice of the time, terms, and place of sale, together with a description of the real estate to be sold, and where situated, as the law directs, by publishing notices in the La Grange Democrat, a newspaper published weekly regularly in my said county, I did, agreeably to said notices, on the 10th day of March, 1875, between the hours of nine in the forenoon and five in the afternoon of that day, at the court-house door, in the town of Monticello, in said county, and while the circuit court of said county was in session,
101 expose to sale at public vendue, to the highest bidder, for cash in hand, under this and three other executions, viz, two in favor of First National Bank of Quincy and one in favor of La Grange Savings Bank, all the right, title, and interest of the within-named defendants William Y. Williams of, in, and to the real estate hereinafter described; and Uri S. Penfield, in trust for the use and benefit of the execution creditors, being the highest bidder for the real estate, to wit, commencing at the southwest corner of the southeast quarter of section 25, town. 61, range 6 west, at letter "D" on county surveyor's plat No. 124, running north $31\frac{60}{100}$ chains to a stone, letter "C;" thence east $17\frac{39}{100}$ chains to a stone, letter "M;" thence south to a stone, letter "N," $16\frac{90}{100}$ chains; thence west to a stone $9\frac{4}{100}$ chains; thence south to a stone $14\frac{08}{100}$; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all being the property of the de-
102 fendant William Y. Williams, and Uri S. Penfield having bid therefor the sum of twenty-five dollars for the 42 acres, tract of defendant William Y. Williams, and Uri S. Penfield became the purchaser thereof, and the same was stricken off and sold to Uri S. Penfield for that sum, of which I have applied twenty-five dollars in part to the payment of the costs. I therefore return the within writ of execution not satisfied.

W. M. MOORE,
Sheriff of Lewis Co., Missouri.

STATE OF MISSOURI,
County of Lewis, ss:

I, Chas. R. McGee, clerk of the circuit court in and for the county of Lewis, do hereby certify that the foregoing papers contain a full, true, and complete copy of the record and proceedings had in said court in the above-entitled cause as fully as the same appears of record and on file in my said office.

Witness my hand as clerk and the seal of said court. Done at office, in Monticello, on this the 26th day of September, A. D. 1877.

[SEAL.] CHAS. R. McGEE, *Clerk.*

103 EXHIBIT E.

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that heretofore, to wit, on the 13th day of December, A. D. 1872, there was filed in the office of the clerk of the circuit court within and for the county of Lewis aforesaid a petition, which said petition is in the words and figures as follows, to wit:

THE FIRST NATIONAL BANK OF QUINCY, plaintiff,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams, Robert Blackwood, Joseph A. Hay, and John Sisler, defendants.

In the Lewis County circuit court. January term, 1873.

Plaintiff avers that plaintiff is an association organized for the purpose of carrying on the business of banking at the city of Quincy, in the State of Illinois; organized under an act of Congress of the United States entitled "An act to provide a national currency secured by
104 a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864.

Plaintiff states that defendants, by their promissory note herewith filed, dated Quincy, Ill., June 3rd, 1871, promised, for value received, to pay to plaintiff at their banking house the sum of five thousand dollars, sixty days after the date thereof, with ten per cent. interest after maturity. Plaintiff says that defendant, on the 6th day of February, 1872, paid the interest in full to that date; that the said note and the remainder of interest as above stated are yet due, for which plaintiff asks judgment.

Plaintiff states that defendants, by their promissory note herewith filed, date' July 31st, 1871, promised, for value received, to pay plaintiff the sum of ten thousand dollars, ninety days after the date thereof, with ten per cent. interest after maturity.

105 Plaintiff says that defendants, on the 6th day of February, 1872, paid the interest in full to that date; that the said note and the remainder of the interest are yet due plaintiff, for which plaintiff asks judgment.

And attached to said petition are the following notes, in words and figures as follows, to wit:

$5,000.00.] QUINCY, ILL., *June 3d*, 1871.

Sixty days after date we, or either of us, promise to pay to the First National Bank of Quincy, or order, at their banking-house, five thousand $\frac{}{100}$ dollars, for value received, with interest at the rate of ten per cent. per annum from date till paid.

J. R. HARRIS AND CO.
GEO. H. SIMPSON.
W. Y. WILLIAMS.
J. N. BLACKWOOD.
J. A. HAY.
JOHN SISLER.

Post-offic :
Renewal , Aug. 5.

[U. S. inter. revenue stamp, $1.50; canceled.]
[U. S. inter. revenue stamp, $1.00; canceled.]

Upon the back of said note is the following indorsement, to wit:

106 Received, Quincy, February 6, '72, interest in full to date.

$10,000.00.] QUINCY, ILLINOIS, *July 3d*, 1871.

Ninety days after date we, or either of us, promise to pay to the First National Bank of Quincy, or order, at their banking-house, ten thousand $\frac{}{100}$ dollars, for value received, with interest at the rate of ten per cent. per annum from due till paid.

J. R. HARRIS & CO.
G. H. SIMPSON.
W. Y. WILLIAMS.
R. N. BLACKWOOD.
J. A. HAY.
JOHN SISLER.

Post-office:
Renewal ⅋, Oct. 4.

[U. S. rev. stamp, $5; canceled.]

Upon the back of said note is the following indorsement, to wit:

Received, Quincy, February 6, '72, interest in full to date.

And afterwards, to wit, on the 13th day of December, A. D. 1872,
107 there was issued from the office of the circuit court for Lewis County a summons, in the words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court.

The State of Missouri to the sheriff of Lewis County, greeting:

We command you to summon George H. Simpson, William Y. Williams, Robert N. Blackwood, Joseph A. Hay, and John Sisler, & Jacob R. Harris, if they be found in your county, to appear before our circuit court, to be holden within and for the county of Lewis, at the court-house, in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in January next, A. D. 1873, then and there before the judge of our said court to answer the petition of the First National Bank of Quincy (a certified copy of which said petition is hereto annexed), and have you then
108 and there this writ, with the return of your action thereupon. Witness my hand as clerk of our said court and the seal thereof. Done at office in Monticello, in the county aforesaid, on the 13th day of Dec., A. D. 1872.

[SEAL.] THOMAS B. JEFFRIES, *Clerk*,
By P. C. AGEE, *Deputy C.*

Upon which said writ appears the following indorsement, to wit:

Executed the within writ in the county of Lewis, on the 19th day of December, A. D. 1872, by delivering a copy of same, with the accompanying petition, to George H. Simpson, and by delivering a copy of this writ to William Y. Williams, Robert N. Blackwood, Joseph A. Hay, and by leaving a copy of this writ at the usual place of abode of John

Sisler with a member of the family over the age of fifteen years. The within-named Jacob R. Harris not found in Lewis County, Missouri.
Fee, $5.50.

W. G. ALLEN,
Sheriff of Lewis County, Mo.
By O. K. CALDWELL,
Deputy.

109 And afterwards, to wit, on the 6th day of January, A. D. 1873, at a circuit court continued and held at the court-house in the town of Monticello, it being during the January term, 1873, of the circuit court of Lewis County, before the honorable E. V. Wilson, judge, the following among other proceedings were had, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes the defendants, George H. Simpson et al., and files motion to rule plaintiff to give security for cost; which said motion is in word and figures as follows, to wit:

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS ET AL.

Now comes the defendants in the above-entitled cause and move the court to require the plaintiff herein to file security for costs, for
110 the reason that said plaintiff is a non-resident of the State of Missouri.

JOHN FOSTER,
Attorney for Def'ts.

And afterwards, to wit, on the 7th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, were had the following proceedings, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes said plaintiff, by its attorney, and files bond of I. B. Alverson as security for the costs of this suit; which said bond is by the court approved.
Which said bond is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFFS,
vs.
JACOB R. HARRIS ET AL., DEF'T.

111 In the Lewis County circuit court.

I, I. B. Alverson, a resident of the State of Missouri, do hereby acknowledge myself bound to pay all costs which have accrued, or may accrue, in the above-entitled cause, this 7th January, 1873.

I. B. ALVERSON.

And afterward, to wit, on the day and year last aforesaid, the following proceedings were had, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes Jacob R. Harris & Co., by their attorney, and file their separate answer to plaintiff's petition; also comes the defendants Joseph A. Hay and John Sisler and file separate answer; and also comes William Y. Williams and Robert N. Blackwood, by their attorney, and file their separate answer to plaintiff's petition; which
112 said answers are as follows, to wit:

Answer of J. R. Harris & Co.

Lewis circuit court. January term, 1873.

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS & CO., GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, ROBERT N. BLACKWOOD, JOSEPH A. HAY, & JOHN SISLER.

Now comes the defendants J. R. Harris & Co., to wit, J. R. Harris, George H. Simpson, and W. Y. Williams, and for their separate answer to said petition say that they deny that the said plaintiff is an association organized under the laws of the United States, as set forth in plaintiff's petition.

And these defendants, further answering, say that they admit that they executed said promissory note mentioned in the first cause of action contained in said plaintiff's petition, in their said firm name of J. R. Harris & Co., but these defendants expressly aver that
113 said note was fully paid and extinguished before its maturity by the execution and delivery to the plaintiff of another certain promissory note for the sum of five thousand dollars, bearing date July 19th, 1871, and due sixty days after the date thereof, which said note was executed by J. R. Harris & Co., G. H. Simpson, W. Y. Williams, J. A. Hay and John Sisler to said plaintiff, and is still owned and held by the payee thereof, and that no new or other consideration passed from the plaintiff to the makers of said last-mentioned note than that mentioned in and evidenced by said note filed with said plaintiff' 1st cause of action in his said petition contained, and these defendants aver that it was through inadvertence, or accident, that said note was not taken up, cancelled at the time of the execution of said last-mentioned note.

And these defendants, further answering, say that they deny
114 ever having executed to plaintiff the note described in said plaintiff's 2nd cause of action, in his said petition contained, as thereon averred and set forth.

And these defendants, further answering, say that they have paid upon said notes filed with plaintiff's petition, at various times since the maturity thereof and before the commencement of this action, the full sum of six thousand nine hundred and seventy dollars and fourteen cents, which ought to be credited upon said last-mentioned note set forth in plaintiff's petition, and which defendants ask may be so credited.

And these defendants, by way of counter-claim against said plaintiff,

say that heretofore, to wit, on the 14th day of March, 1871, the said plaintiff become justly indebted to these defendants for forty
115 thousand pounds of manufactured tobacco, which these defendants, on that day, sold and delivered to said plaintiff at and for the agreed price of thirty-two cents per pound, amounting in all to the sum of twelve thousand dollars, which said sum is still due and unpaid, and is still held by these defendants against said plaintiff. Wherefore, defendants ask judgment against plaintiff for twelve thousand dollars, and interest thereon from March 14th, 1871, and for costs.

JOHN FOSTER,
Attorney for Defendants.

Answer of Hay and Sisler.

Lewis circuit court. January term, 1873.

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, ROBERT N. BLACKWOOD, JOSEPH A. HAY, & JOHN SISLER.

Now comes the defendants Joseph A. Hay & John Sisler, and
116 for a separate answer to the petition of the said plaintiff say that they deny that the plaintiff is an association, organized under the laws of the United States, as set forth in plaintiff's petition.

And these defendants, further answering, say that they admit that they executed the said promissory note mentioned in the first cause of action contained in said plaintiff's petition, but these defendants expressly ever that said note was fully paid, extinguished before its maturity, by the execution and delivery to the plaintiff of another certain promissory note for the sum of five thousand dollars, bearing date July 19th, 1871, and due sixty days after the date thereof; which said note was executed by J. R. Harris & Co., G. H. Simpson, W. Y. Williams, J. A. Hay, and John Sisler to said plaintiff, and is still owned and held by the payee thereof, and that no new or other consideration
117 passed from the plaintiff to the makers of said last-mentioned note than that mentioned in and evidenced by said note filed with said plaintiff's first cause of action in his said petition contained, and these defendants aver that it was through inadvertence or accident that said note was not taken up and cancelled at the time of the execution of said last mentioned note.

And these defendants, for answer to the said plaintiff's second cause of action contained in his said petition, say that they deny that they executed a promissory note to said plaintiff as therein averred and set forth.

And these defendants, further answering, say that these defendants were accom'odation makers only of said notes filed in this action, and signed the same for the accommodation of the said J. R. Harris
118 & Co., who were the beneficiaries therein, and who, at the date thereof, were engaged in the manufacture of tobacco at the city of Lagrange, in the State of Missouri. That at the time these defendants executed said notes the said firm of J. R. Harris & Co. were indebted to the said plaintiff in the sum of thirty thousand dollars, and said notes were so given for the better securing of a portion of the same.

That at the time these det'ts so signed the notes filed in this action

it was agreed, by and between said plaintiff and the said J. R. Harris & Co. and these defendants, that in consideration of these defendants executing said notes, any monies which might thereafter be paid by said firm of J. R. Harris & Co. to said plaintiff in payment of the said indebtedness of thirty thousand dollars should be first applied
119 upon said notes executed by these defendants in payment thereof. That relying upon said agreement so entered into as aforesaid, these defendants signed said notes, and these defendants aver that the making of said agreement by said plaintiff and said J. R. Harris & Co. formed a material inducement for them to sign said notes, and that had it not been for the entering into of said agreement by the parties thereto as aforesaid they would not have executed said notes. That afterwards, to wit, subsequent to the making of said agreement and the execution of said notes, the said firm of J. R. Harris and Co. paid to the said plaintiff a large amount of money in liquidation of this said indebtedness to said plaintiff, to wit, about the sum of twenty thousand
120 dollars; but that the said plaintiff, in violation of said agreement so entered into as aforesaid, applied the same to the payment of that portion of the indebtedness of the said J. R. Harris not secured by the notes signed by these defendants, and wholly refused to apply the same upon said notes as they had by the terms of said agreement contracted to do.

Wherefore these defendants ask the interposition of this court that the said plaintiff be decreed to apply said moneys as by the terms of said agreement plaintiff had contracted to do; and, further, that said notes be decreed fully paid and satisfied and these defendants discharged from further liability thereon, and that defendants have judgment for costs.

JOHN FOSTER,
Attorney for Defendants Hay and Sisler.

Answer of Simpson, Williams, & Blackwood.

121 Lewis circuit court. January term, 1873.

THE FIRST NATIONAL BANK OF QUINCY
vs.
JACOB R. HARRIS, GEORGE H. SIMPSON, Robert N. Blackwood, Joseph A. Hay, & John Sisler.

Now comes the defendants George H. Simpson, William Y. Williams *Y. Williams*, and Robert N. Blackwood, and for answer to the petition of the said plaintiff say that they deny that plaintiff is an association organized under the laws of the United States as set forth in plaintiff's petition.

And these defendants, further answering, say that they admit that they executed the said promissory note mentioned in the first cause of action contained in said plaintiff's petition, but these defendants expressly aver that said note was fully paid, and extinguished before its maturity by the execution and delivery to the plaintiff of another certain promissory note for the sum of five thousand dollars, bear-
122 ing date July 19th, 1871, and due sixty days after the date thereof, which said note was executed by J. R. Harris & Co., G. H. Simpson, W. Y. Williams, J. A. Hay, and John Sisler, and is still

owned and held by the payee thereof, and that no new or other consideration passed from the plaintiff to the makers of said last-mentioned note then that mentioned in and evidenced by said note filed with said plaintiff' 1st cause of action in his said petition contained, and these defendants aver that it was through inadvertence or accident that said note filed in this action was not taken up and cancelled at the time of the execution of said last-mentioned note.

And these defendants, for answer to the said plaintiff's second cause of action in his said petition contained, say that they deny that they executed a promissory note to said plaintiff as therein averred and
123 set forth. And these defendants, further answering, say that they were mere accommodation makers of said notes filed in this action, and signed the same for the accommodation of the said firm of J. R. Harris & Co., who, at the date thereof, were engaged in the manufacture of tobacco at the city of La Grange, in the State of Missouri. That after the maturity of said notes, and at divers times before and after that date, the said firm of J. R. Harris & Co. forwarded to said plaintiff, at Quincy, Ill's, large sums of money to be applied in payment of said notes and other notes then held by said plaintiff against said firm, to wit, about the sum of thirty thousand dollars; that sum being amply sufficient to pay off and fully satisfy all of said notes, including the notes filed in this action. That at the time said monies were so transmitted to said plaintiff the said plaintiff held or pretended to hold certain demands against J. R. Harris, who then was a
124 member of said firm of J. R. Harris & Co., aforesaid to a large amount, to wit, to the sum of twenty thousand dollars; that upon the receipt of said monies as aforesaid from said firm of J. R. Harris & Co., said plaintiff, colluding and confederating with said J. R. Harris, and well knowing that said monies were not the individual property of the said J. R. Harr s, but wilfully and fraudulently contriving how to cheat and defraud the said firm of J. R. Harris & Co. and these defendants, their sureties, out of said monies, fraudulently applied twenty thousand dollars of and out from said monies to the payment of said individual indebtedness of said J. R. Harris instead of applying the same to the payment of the notes filed in this action and other notes of said firm held by plaintiff, all of which said sum of twenty thousand dollars would have fully paid. Wherefore these defendants ask that so much
125 of said sum of twenty thousand dollars so fraudulently appropriated by said plaintiff may be applied to the payment of the notes filed in this action as may be necessary to fully satisfy the same, and that said notes be delivered up to defendants for cancellation.

And further that defendants have judgment for cost of this action.

JOHN FOSTER,
Attorney for Defendants.

And that afterwards, to wit, on the 8th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term, to wit.

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes said parties, by their attorneys, and thereupon on motion the defendant withdraws his motion to rule the plaintiff
126 to give security for cost, and on the further motion, and by agree-

ment of said parties, this cause is continued until the next term of this court.

And that afterwards, to wit, on the 5th day of May, 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes the plaintiff, by its attorney, and files reply to separate answer of Jacob R. Harris & Co., and also files reply to separate answer of Williams and Blackwood.

Which said reply*s* are in words and figures as follows, to wit:

THE FIRST NATIONAL BANK OF QUINCY
against
JACOB R. HARRIS, GEORGE H. SIMPSON,
127 William Y. Williams, Robert N. Blackwood, Joseph A. Hay, and John Sisler,
defendants.

In Lewis County circuit court.

Now comes plaintiff, and for reply to the separate answer of defendants Joseph A. Hay and John Sisler, and avers that plaintiff is an association organized under the laws of the United States, as set forth in plaintiff's petition. Plaintiff, for further reply to defendant' answer, denies that said note mentioned in the count of plaintiff's petition was fully paid and extinguished before its maturity, by defendants executing and delivering to plaintiff another certain promissory note for the sum of five thousand dollars, bearing date July 19th, 1871, and due sixty days after the date thereof, of which said note was executed by J. R. Harris & Co., Geo. H. Simpson, W. Y. Williams, J. A. Hay, and John Sisler to said plaintiff, and denies that said note is still owned and
128 held by the payee thereof, and denies that no new or other consideration passed from the plaintiff to the makers of said last-mentioned note than that mentioned in and evidenced by said note filed with said plaintiff's 1st cause of action in his said petition contained, and denie' that it was through inadvertence or accident that said note was not taken up and cancelled at the time of the execution of said last-mentioned note and say that no other note was given by defendant in lieu thereof.

Plaintiff, for further reply, avers that defendants did execute the note mentioned in plaintiff's second cause of action in said petition, and plaintiff denies that these defendants were accommodation makers only of said note filed in this action, and signed the same for the accommodation of said J. R. Harris & Co., and denies that J. R. Harris were the benefi*sesor*ies therein.

129 Plaintiffs, for further reply, says it is true that at the time these defendants executed said note the said firm of J. R. Harris & Co. were indebted to plaintiff, but plaintiff denies that said notes were given for the better securing a portion of the same, and av'ers that said notes were given to plaintiff for the indebtedness of these defendants. Plaintiff, for further reply, denies that at the time these defendants so signed the notes filed in this action it was agreed by and between

plaintiff and the said J. R. Harris & Co. and these defendants that in consideration of these defendants executing said notes any monies which might thereafter be paid by said firm of J. R. Harris & Co. to said plaintiff in payment of the said indebtedness aforesaid should be first applied upon said notes executed by these defendants in payment thereof, and denies that there was any such agreement made between plaintiff and defendants, and denies that the making of said agreement
130 by plaintiff and J. R. Harris & Co. formed a material inducement for defendant to sign said notes.

Plaintiff, for further reply, says it is not true that afterwards, to wit, subsequent to the making of said agreement and the execution of said notes, the said firm of J. R. Harris & Co. paid to the said plaintiff a large amount of money in liquidation of their said indebtedness to said plaintiff, the sum of twenty thousand dollars, and denies that plaintiff, in violation of said agreement so entered as aforesaid applied the same to the payment of that portion of the indebtedness of the said J. R. Harris & Co. no' secured by the notes of these defendants, and wholly refused to apply the same upon said notes, as they had by the terms of said agreement contracted to do.

And plaintiff, for further reply, avers that all monies received by
131 him from J. R. Harris & Co., and these defendants to be applied on these notes has been truly credited thereon; that the balance, as stated in plaintiff's petition, is yet due plaintiff, and for which he asks judgment.

I. B. ALVERSON,
Attorney for Plaintiff.

THE FIRST NATIONAL BANK OF QUINCY
against
JACOB R. HARRIS, GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, ROBERT N. BLACKWOOD, JOSEPH A. HAY, and JOHN SISLER, defendants.

In the Lewis County circuit court.

Now comes the plaintiff and for reply to the answer of defendants J. R. Harris & Co., and avers that plaintiff is an association organized under the laws of the United States, as set forth in plaintiff's petition.

And for further reply denies that said note in the first count of plaintiff's petition mentioned was fully paid and extinguished before
132 its maturity by the execution and delivery to the plaintiff of another certain promissory note for the sum of five thousand dollars, bearing date July 19th, 1871, and due sixty days after its date, which note was executed by J. R. Harris & Co., Geo. H. Simpson, W. T. Williams, R. N. Blackwood, J. A. Hay, and John Sisler, to said plaintiff, and plaintiff denies that note is still owned and held by the payee thereof, and that no new or other consideration passed from the plaintiff to the makers thereof than that mentioned in said note, than that mentioned in and evidenced by said note filed with said plaintiff' 1st cause of action in said petition contained, and plaintiff denies that it was through inadvertence or accident that said note was not taken up and cancelled at the time of the execution of said last-mentioned note, and say that the said note is the joint note of all these
133 defendants. Plaintiff, for further reply, avers that these defendants did execute to the plaintiff the note described in plaintiff' 2nd cause of action as stated in his petition, and plaintiff says it is

not true that these defendants have paid on said notes filed with plaintiff' petition the sum of six thousand nine hundred and seventy and $\frac{14}{100}$ dollars at various times since said notes matured, became due, and before the commencement of this suit, which ought to be credited upon said last-mentioned notes set forth in plaintiff's petition, and plaintiff claims that plaintiff has paid that sum or any other sum of money to plaintiff except what is credited upon said notes.

Plaintiff, for further reply to defendant' counter-claim, says that it is not true that heretofore, to wit, on the 14th day of March, 1871, that plaintiff became jointly indebted to these defendants for forty
134 thousand pounds of manufactured tobacco, which these defendants on that day sold and delivered to said plaintiff at and for the agreed price of thirty-two cents per pound, amounting to the sum of twelve thousand dollars, and denies that said sum is still due and unpaid, and is still held by these defendants against said plaintiff; and plaintiff, further replying, denies ever buying of defendant 40,000 pounds of tobacco, or any other quantity of manufactured tobacco, at the agreed price of thirty-two cents per pound or any other price, and denies ever receiving from defendants 40,000 pounds or any other number of pounds of manufactured tobacco, at any price or on any account whatever.

Wherefore plaintiff prays for judgment as stated in plaintiff's petition.

I. B. ALVERSON,
Attorney for Plaintiff.

THE FIRST NATIONAL BANK OF QUINCY
against
135 JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams, Robert N. Blackwood, Joseph A. Hay, & John Sisler, defendants.

Lewis County circuit court.

Now comes the plaintiff, and for reply to the separate answer of George H. Simpson, William Y. Williams, & R. N. Blackwood, and avers that plaintiff is an association organized under the laws of the United States, as set forth in plaintiff's petition.

Plaintiff, further replying to defendants' answer, denies that the note in suit set out in the first count of plaintiff's petition was fully paid and extinguished before its maturity by the execution and delivery to plaintiff of another promissory note for the sum of five thousand dollars, bearing date July 19th, 1871, and due sixty days after the date thereof, executed by these defendants; and denies that said renewal note is still owned and held by the payee thereof; that no new
136 or other consideration passed from the plaintiff to the makers of said last mentioned note in and evidenced by said note filed with said plaintiff' 1st cause of action in his said petition contained, and denies that it was through inadvertence or accident that said note so filed in this action was not taken up and cancelled at the time of the execution of said last-mentioned note. Plaintiff, for further reply, avers that defendants did execute the promissory note to plaintiff, as set out in plaintiff's second cause of action, and denies that defendants were accommodation makers of said notes filed in this action and signed the same for the accommodation of the said firm of J. R. Harris & Co.; and plaintiff denies that defendants, after the maturity of

said note, and at divers times before and after that date, that the said firm of J. R. Harris & Co. forwarded to plaintiff,
137 at Quincy, Illinois, large sums of money to be applied in payment of said notes and other notes then held by said plaintiff against said firm of J. R. Harris & Co., the sum of thirty thousand dollars, or any other sum other than that credited on said notes; denies that the sum thus forwarded was sufficient to pay off and fully satisfy all of said notes, including the notes filed in this suit. Plaintiff, further replying, says it is not true that upon the receipt of said monies, as aforesaid, from said firm of J. R. Harris & Co., said plaintiff colluded and confederated with said J. R. Harris, and well knowing that said monies were not the individual property of the said J. R. Harris, wilfully and fraudulently contriving to cheat and defraud the said firm of J. R. Harris & Co. and these defendants and their surities out of said monies,
138 fraudulently applied twenty thousand dollars of and out from said monies to the payment of the individual indebtedness of said J. R. Harris, instead of applying the same to the payment of the notes filed in this action and other notes of said firm held by plaintiff. Plaintiff denies ever receiving twenty thousand dollars from said firm, or any other sum whatever except as credited on said notes.

And plaintiff avers that the notes in suit, as stated in plaintiff's petition, are yet due, and for which plaintiff asks judgment.

I. B. ALVERSON,
Attorney for Plaintiff.

And afterward, to wit, at a circuit court continued and held on the 10th day of May, A. D. 1873, among other proceedings the following were had, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANT. } On note.

139 At this day comes said parties, by their attorneys, and on motion this cause is continued on the application of defendant and at defendant's costs. It therefore considered by the court that plaintiff do have and recover of defendant the costs and charges herein laid out and expended at this term of the court, and that he have execution.

And afterwards, to wit, on the 5th day of September, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes said parties, by their attorneys, and on motion leave is granted to said defendant John Sisler to file amended answer, which said amended answer is filed.

140 Which said answer is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
HARRIS, SIMPSON, & SISLER, DEFENDANTS.

In circuit court, Lewis County, Mo.

Defendant John Sisler, for amended answer, states that he admits he

signed the note sued on in 1st count plaintiff' petition, but says the same was signed thereto by mistake, that the same was in renewal of a note given by J. R. Harris & Co. with William Y. Williams, G. H. Simpson, & R. N. Blackwood as security to plaintiff. That George H. Simpson, one of defendants, had previous to the date thereof obtained this defendant's signature to another note given to plaintiff by said parties above named, and he, supposing the first-named note to be the one defendant' name had been signed, and it being about due, came to
141 defendant with the note sued on in said 1st count, represented the same to be the note that defendant had signed, and defendant, relying upon the representation of said Simpson, signed said note, believing the same to be the renewal of the note to which his name had already been signed as aforesaid; and defendant, further answering, says that *says that* said note was substituted for the said old note, and that said old note is and was the only consideration for the one sued on, and that money was obtained thereon from plaintiff thereon by discount or otherwise, and defendant now pleads said mistakes in bar of plaintiff' right to recover thereon; and defendant, further answering, says that plaintiff has the same names upon note sued on as on the old note, and sustained , nor would any damage by release of defendant Sisler.

And to second count defendant admits execution of note sued on therein, but says same has been fully paid off.

JOHN SISLER,
142 By J. G. BLAIR,
Attorney.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term aforesaid, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

At this day comes the plaintiff, by its attorney, and files reply to amended answer of John Sisler.

Which said reply is in words and figures as follows, to wit:

THE FIRST NATIONAL BANK OF QUINCY
against
JACOB R. HARRIS, GEORGE H. SIMPSON, John Sisler, and others.

In Lewis County circuit court.

Now comes the plaintiff and replies to the separate amended answer of defendant Sisler. Plaintiff denies that the signature of de-
143 fendant Sisler was obtained to the note sued on in the first count of plaintiff's petition, dated June 3rd, 1871, by the fraudulent conduct and representations of plaintiff and its agents, without any consideration therefor moving from plaintiff to defendant, and say that the same is wholly untrue. Plaintiff further replies and says that it is not true that the note described in the second count of plaintiff' petition has been fully paid off and discharged, and avers that the same is yet due plaintiff.

I. B. ALVERSON,
Attorney for Plaintiff.

And afterwards, to wit, on the sixth day of September, A. D. 1873, at a circuit court continued and held as aforesaid, among other proceedings the following were had at said term, to wit:

FIRST NATIONAL BANK OF QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS. } On note.

144 At this day comes said parties, by their attorneys, and thereupon comes John Sisler, defendant, and files his application for a continuance of this cause verified by his affidavit; thereupon this cause is, upon said application, continued until the next term of this court at the cost of the defendant, John Sisler. It is, therefore, considered by the court that plaintiff do have and recover of defendant John Sisler their costs and charges laid out and expended at this term of the court and that execution issue therefor.

Which application is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
J. R. HARRIS, GEORGE H. SIMPSON, SISLER, and others, defendants.

In the circuit court for Lewis County, Mo.

Now comes def't Sisler & makes application for a continuance of this cause, and in support thereof says that he cannot safely go to trial on account of the absence of a material witness in this cause and on account
145 of the failure to secure the evidence of said witness, who is a non-resident of this State. The name of the absent witness is John Sisler, a resident of Great Bend, State of Kansas. He says that said witness has in his possession or under his control, or has lost or mislaid, valuable & material papers, testimony necessary to his defence in this cause, and so had in his possession or under his control at the last term of this court, or had mislaid or lost the same prior thereto. He says that he had written to said Foster, to Great Bend, prior to last court, to return the same to him, as will appear by the application of this def't for a continuance of this cause at last term, & which def't prays may be considered as part of this application so far as applicable. He says that the evidence in the possession of said Foster, and consists of a letter addressed by plaintiff to W. Y. Williams & G. H. Simpson some time, stating to them in said letter that he that day (day of date of said letter) bought of J. H. Harris & Co., codefendants herein and prin-
146 cipal of this def't, 40 thousand pounds of tobacco, to be credited on the indebtedness of said J. R. Harris & Co. to plaintiff, and stating that she appointed them her agents to sell the same. Defendant says that immediately after the last term of this court he made inquiry of James W. Bohon, whose wife is a sister of said Foster's wife, and of James Burns, whose wife is also a sister of said Foster's wife, as to the whereabouts of said Foster, and whether they or any member of their families had received any letter or letters, or other information, from said Foster or his wife stating where said Foster then was. They replied that they had received a letter or *or* letters, defendant can't say which, from Foster or his wife, or both, defendant cannot now recollect, a short time before the date of said conversation, and that said Foster or wife, or both, stated in their letters that he, said Foster, and his wife

intended to move to and locate in Topeka, in said State of Kansas,
147 and far distant from said Great Bend, in the month of June, 1873, next ensuing the said conversation. Defendant says that said Foster had resided in said town of La Grange just before removing to Kansas, and married his wife there, and who had also resided there a long time before her intermarriage with said Foster, and that he went to said Bohon and Burns because he had been informed previous to that time of the correspondence aforesaid, and because he was desirous of and endeavoring to learn the permanent location of said Foster, that he might obtain said letter from him, or prove its loss and contents by taking his deposition; that he continued to inquire from time to time thereafter of said Bohon and Burns as to whether they had received any further letters from said Foster and wife as to their removal to and location in said Topeka, or as to whether they still remained in Great Bend; that they continued to inform defendant they had
148 received no letters from them nor information as to whether they were still residing in Great Bend or had removed to Topeka, and that they knew not where they were then living; that these inquiries continued until some time in the latter part of the month of July last (exact date 'known), where, upon inquiry of said Bohon or Burns, defendant was informed that they had recently received a letter from said Foster or his wife stating that they were still in Great Bend aforesaid. Upon learning this fact, defendant, having no acquaintance nor being acquainted with any business men or attorneys at law in said Great Bend, consulted with his attorneys a few days thereafter, and as soon as he could reasonably see them, they residing one ¼ and the other 26 miles distant from him; that upon a consultation with his said attorneys they advised this defendant to give no-
149 tice to take the deposition of said Foster at the post-office in said Great Bend on the 23 day of August, 1873, and in that way secure the original letter by having it filed in his deposition, or thereby show its loss and contents, and also advise this defendant in the mean time to learn the name of some persons or her sons in said Great Bend, and write to them and get the name of some attorney to attend to the taking such depositions and getting said letter or evidence of its loss and contents. Defendant says that he did right away have notice served upon I. B. Alverson, attorney of record for plaintiff, on the 5th day of August last, that deposition of witnesses to be read in evidence on the trial of this cause on part of defendant would be taken at the post-office in said Great Bend on said 23 day of August. That he, on the next day after said notice was so served, wrote a letter to Samuel Mabee, a banker, and one to Thomas L. Stone, hotel keeper,
150 in said Great Bend, requesting them to send him (defendant) the name of some good and reliable attorney in said Great Bend to attend to taking said depositions. That he received answer to said letters about the 6th of August last, giving him the names of several attorneys; and that said Muler gave him the name, as he said, of the most and only reliable attorney in said town, whose name defendant does not now recollect. That immediately after receiving said letters (date not known) he gave the same to one of his attorneys, who immediately thereafter, to wit, on or about the 18th day of said month of August, obtained a commission from the clerk of this court to take the deposition of the witnesses aforesaid at the time and place aforesaid, and who, as defendant is informed and believes, mailed the same to the attorney whose name had been given him by said Mabier on the same day said commission was served as aforesaid. That said commis-

151 sion and instructions how to proceed in taking the said depositions was inclosed in a envelope and directed or addressed to the said attorney at said Great Bend where said Maber stated he resided; and the same was placed in the post-office in the town of Monticello, in said county of Lewis, on the day it was sued out as aforesaid, since which time defendant has heard nothing of said commission or the taking said deposition. And defendant further says that he knows of no other witness or evidence by whom or by which he can prove the same facts as contained in said letter, or that he can prove by said Foster.

And defendant further says that he will prove upon the trial of this cause an agreement between plaintiff and the firm of J. R. Harris & Co. and this defendant, and the other security, J. A. Hay, to the notes sued on, made some considerable time prior to the writing of the letter above and herein named, but the date of which defendant does not now recollect, by which it was stipulated agreed between them that all

152 moneys, property, and assets which should be thereafter paid to or received by plaintiff from said firm of J. R. Harris & Co. should be applied to the payment of the debts of said J. R. Harris & Co. to said plaintiff then existing, and upon which the said Sisler, this defendant, and said Hay stood as security. That he will prove on the trial of this cause that the notes sued on, except the note sued on in the first count of plaintiff's petition herein, constitute a part of said indebtedness of that the notes sued are but renewals of the same. That, in addition to the said notes so named sued on in this suit and the other suit now pending in this court between same parties hereto & No. 5680, there was one other note of about $8,000 and said Harris & Co., & to which said agreement applied. That he expects to prove, by the evidence which he shall introduce on the trial of these two cases, that the amount of tobacco, property, money, and assets in connection with the forty thousand pounds tobacco mentioned in said letter received

153 by and paid to plaintiff by said J. R. Harris & Co. since said agreement, in connection with credits to which said indebtedness were entitled at the date of said agreement, on account of payments already then made, that the said indebtedness of said J. R. Harris & Co., upon which this defendant & said Hay stood as securitys, including the notes sued on in this and the other suit mentioned, have been paid off, and that no credit has been given for the 40,000 pounds of tobacco. Defendant says that this application is not made for vexation or delay, but that justice may be done in the premises. And believing he has a merritorious defence to the notes sued on in this & the other case named, he wishes this application to apply to both cases as the defence is the same in both, except as to the note sued on in the said first count of plaintiff' petition herein, and as the evidence is wanted and expected in both cases.

Defendant says that the failure to have said deposition here at

154 this term results from no fraud, collusion, or other improper conduct between said Foster or his attorney, to welcome said commission, and instructions were sent; that if a continuance be granted in this and the other case named, he believes he will be able to have said letter here at next term on the deposition of said Foster proving its loss and contents.

JOHN SISLER.

Subscribed and sworn to before me Sept. 6th, 1873.

THOM'S B. JEFFRIES, *Clk*,
By P. C. AGEE, *D C.*

And afterwards, to wit, on the 4 day of March, A. D. 1874, at a circuit court continued and held at the court-house, in the town of Monticello, Lewis County, Missouri, among other proceedings the following were had, to wit:

FIRST NATIONAL BANK, QUINCY, PLAINTIFF,
against
JACOB R. HARRIS ET AL., DEFENDANTS.

At this day comes the parties, by their attorneys, and, on motion, it is ordered by the court that an attachment issue against George Simpson, witness for defendant John Sisler, returnable instanter, that
155 he be and appear in this court, and show cause, if any he have, why he should not be fined for a contempt of court in failing to appear when legally summoned thereto.

And afterward, to wit, on the 5 day of March, A. D. 1874, at a circuit court continued and held at the court-house, in the town of Monticello, within and for the said county of Lewis, among other proceedings the following were had at said term, to wit:

THE FIRST NATIONAL BANK OF QUINCY, plaintiff,
against
JACOB R. HARRIS, GEORGE H. SIMPSON, William Y. Williams, Robert N. Blackwood, Joseph A. Hay, and John Sisler, defendants. } On note.

At this day come said parties, by their attorneys, and, on motion, this cause is dismissed as to the defendants George H. Simpson and Joseph A. Hay, and this cause coming on to be heard, a jury is ordered. Thereupon comes a jury, to wit, L. C. Biggs, G. S. Kendrick, Wm. W. Kendrick, Y. P. True, L. B. Clay, R. H. Jennings, Walter C. Helms,
156 James M. Marks, W. T. Ball, Thomas G. Wallace, Albert Hoyt, and William H. Schofield, twelve good and lawful men, who are duly sworn and empanneled to try this cause; thereupon, on motion, leave is granted the defendants to file amended answer, which said amended answer is filed; and thereupon, also, the plaintiff files motion to strike out part of defendants' amended answer, which said motion is submitted to the court and the court sustains the motion, and to the judgment of the court in sustaining said motion the defendants, then and there, by their attorneys, excepted. Thereupon, after hearing the evidence and arguments of counsel, this cause is submitted to the jury, , return and again return into court and say they find for the plaintiff on the first count the sum of six thousand and thirty-seven dollars and fifty cents, and they find for the plaintiff on the second count the sum of twelve thousand and seventy-five dollars. Thereupon said jury is discharged and said verdict of said jury is sub-
157 mitted to the court, and the court finds from said verdict for the plaintiff against the defendants Jacob R. Harris, William Y. Williams, and Robert N. Blackwood, and John Sisler the sum of eighteen thousand one hundred and twelve dollars and fifty cents. It is therefore considered by the court that plaintiff do have and recover of the defendants Jacob R. Harris, William Y. Williams, Robert N. Blackwood, and John Sisler the sum of eighteen thousand one hundred and

twelve dollars and fifty cents, with interest thereon at the rate of ten per cent. per annum, together with the costs and charges herein laid out and expended, and that they have execution therefor.

Which said amended answer is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY
against
HARRIS, SIMPSON, AND SISLER.

In circuit court, Lewis County, Missouri.

158 Defendant John Sisler, for amended answer, states that he admits he signed the note sued on in 1st count plaintiff's petition, but says the same was signed thereto by mistake; the same was in renewal of a note given by J. R. Harris & Co., with W. Y. Williams, G. H. Simpson, & R. N. Blackwood as security, to plaintiff; that George H. Simpson, one of defendants, had previous to the date thereof obtained this defendant's signature to another note given to plaintiff by said parties above named, and he supposing the first-named note to be the one defendant named had been signed, and it being about due, came to defendant with the note sued on in said 1st count, represented the same to be the note that defendant had signed, and defendant, relying upon the representations of said Simpson, signed said note, believing the same to be the in renewal of the note to which his
159 name had already be ensigned as aforesaid; and defendant, further answering, says that said notes was substituted for the said old , and *and* that said old is and was the only consideration for the one sued on, and that money was obtained thereon by discount or otherwise, and defendant now pleads said mistake in bar of plaintiff' right to recover thereon. And defendant, further answering, says that plaintiff has the same names upon note sued on as on the old note and sustained , nor would any damage by release of defendant Sisler.

And to second count defendant admits the execution of the note sued on therein, but says same has been fully paid off.

JOHN SISLER,
By J. G. BLAIR.
Attorney.

Which said reply of plaintiff to defendant's second amended answer is in words and figures as follows, to wit:

FIRST NATIONAL BANK OF QUINCY, PL'FF,
against
J. R. HARRIS, JOHN SISLER ET AL., DEF'T.

160 Plaintiff moves the court to strike out all that portion of defendant's second amended answer contained between the letters marked A & B in the margin, because the same constitutes no defence to plaintiff's cause of action.

ALVERSON & ANDERSON,
Attorney for Plaintiff.

And afterwards, to wit, on the 22nd day of December, A. D. 1874' there was issued from the office of the clerk of the circuit court for

Lewis County an execution upon the judgment herein rendered, which said execution is in words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court of said county.

The State of Missouri to the sheriff of Lewis County, greeting:

Whereas the First National Bank of Quincy, on the 5th day of March, in the year of our Lord eighteen hundred and seventy-four, at our circuit court for said county of Lewis, recovered against Jacob R. Harris, William
161 Y. Williams, Robert N. Blackwood and John Sisler the sum of eighteen thousand one hundred and twelve dollars and fifty cents, and also plaintiff' costs, which have been taxed the sum of forty-two dollars and 19 cents: These are, therefore, to command you, that of the goods and chattles, lands and tenements of the said Jacob R. Harris, William Y. Williams, Robert N. Blackwood, and John Sisler you cause to be made the debt and costs aforesaid, and that you have the same before the judge of our said court on the first Monday in March next to satisfy said debt and cost, and have you then and there this writ certifying how you have executed the same.

Witness Thomas B. Jeffries, clerk of our said court, with the seal thereof. Done at office in Monticello, in the county aforesaid, on this 22nd day of December, A. D. 1874.

[SEAL.] THOM'S B. JEFFRIES, *Clerk*,
By P. C. AGEE, *D. C.*

162 Upon said execution appears the levy and report of sale of real estate made by the sheriff of Lewis County, Missouri, to wit:

Received by me this 22nd day of December, A. D. 1874.

W. M. MOORE,
Sheriff.

Executed the within writ in the county of Lewis, on the 10th day of February, 1875, by levying upon and seizing as the property of the defendants William Y. Williams and Robert N. Blackwood of, in, and to the following-described real estate, to wit, commencing at the southwest corner of the southeast quarter of section 25, township 61, range 6 west, at letter D on county surveyors' plat No. 124, running north $31\frac{60}{100}$ chains to a stone, letter C; thence east $17\frac{39}{100}$ chains to a stone, letter M; thence south to a stone, letter N, $16\frac{90}{100}$ chains; thence west to a stone $9\frac{4}{100}$ chains; thence south to a stone $14\frac{70}{100}$ *hundred* chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres more or less, all being the property of defendant William Y. Williams; also upon the property of defendant
163 Rob. N. Blackwood, to wit, lots No. 6 and 7, in block No. 6, in Wright and Shropshire's addition to the city of Lagrange, all in Lewis Co., Mo.

Fee, $8.50. Costs paid by plaintiff.

WILLIAM M. MOORE,
Sheriff.

I, William M. Moore, sheriff of Lewis County, Missouri, hereby certify that in compliance with the command of the within execution, having

prior to the day of sale hereinafter mentioned given at least twenty days' notice of the time, terms, and place of sale, together with a description of the real estate to be sold, and where situated, as the law directs, by publishing notice in the Lagrange Democrat, a newspaper published weekly regularly in my said county, I did, agreeable to said notice, on the tenth day of March, 1875, between the hours of nine in the forenoon and five in the afternoon of that day, at the court-house door, in the town of Monticello, in said county, and while the
164 circuit court of said county was in session, expose to sale at public vendue to the highest bidder for cash under this and three other executions, viz, one in favor of 1st National Bank Quincy and two in favor of Lagrange Savings Bank, all the right, title, and interest of the within-named defendant' William Y. Williams & Robert N. Blackwood of, in, and to the real estate hereinafter described, and Uri S. Penfield in trust for the execution creditors (their use and benefit), being the highest bidder for the real estate, to wit, commencing at the SW. corner of the SE. qr. of sec. 25, town. 61, range 6 west., at letter D on county surveyor's plat 124, running north $31\frac{60}{100}$ to a stone, letter C; thence east $17\frac{39}{100}$ chains to a stone, letter M; thence south to a stone, letter N, $16\frac{90}{100}$ chains; thence west to a stone $9\frac{4}{100}$ chains; thence south to a a stone $14\frac{74}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres more or less, all being the property of said defendant W. Y. Williams; also
165 lots 6 & 7, b'l'k 6, in Wright and Shropshire's addition to the city of Lagrange, being the property of said defendant Robert N. Blackwood, all being in Lewis County, Missouri, and having bid therefor the sum of twenty-five dollars for the 42-acre tract of defendant William Y. Williams, and five dollars each for lot 6 & 7, block 6, Wright & Shropshire's addition to Lagrange, and the property of the defendant Robert N. Blackwood, Uri S. Penfield became the purchaser thereof, and the same was stricken off and sold to Uri S. Penfield in trust for the execution creditors for that sum, of which I have applied ($35.00) thirty-five dollars to the payment of costs on this and other execution. I therefore return the within writ of execution not satisfied.

W. M. MOORE,
Sheriff of Lewis Co., Missouri.

STATE OF MISSOURI,
County of Lewis:

I, Charles R. Ma Gee, clerk of the circuit court in and for the
166 county of Lewis aforesaid, certify that the foregoing pages contain a full, true, and complete copy of the record and proceedings had in said court in the above entitled cause as fully as the same appears of record and on file in my said office.

Witness my hand as clerk and the seal of said court. Done at office in Monticello this 27th day of September, A. D. 1877.

CHARLES R. MAGEE, *Clerk*,
By L. W. SUMMERS, *D. C.*

167 EXHIBIT F.

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that heretofore, to wit, on the 16th day of December, 1872, there was filed in the office of the clerk of the circuit court a petition which is in the words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

THE LAGRANGE SAVINGS BANK, PLAINTIFF,
against
GEO. H. SIMPSON, WILLIAM Y. WILLIAMS, and Robert N. Blackwood, defendants.

In the Lewis County circuit court, January term, 1873.

Plaintiff states that defendants by their promissory note herewith filed and dated August 14th, 1871, promised for value received to pay to defendant George H. Simpson, at the Lagrange Savings Bank, sixty days after the date thereof, sixteen hundred and thirty-five and $\frac{25}{100}$ dol-
168 lars. Plaintiff says that defendant Geo. H. Simpson, on the 14th day of August, 1871, for value received, sold and endorsed and delivered said note to plaintiff, and that defendant on the first day of January, 1872, paid all interest due to that date.

Plaintiff says that said note and the remainder of interest are yet due plaintiff, and for which plaintiff asks judgment.

J. B. ALVERSON,
Attorney for Plaintiff.

Attached to and a part of said petition is a note in the words and figures as follows, to wit:

$1,635\frac{25}{100}$.]

LAGRANGE, *Aug.* 14, 1871.

Sixty days after date we or either of us promise to pay to G. H. Simpson or order, at the Lagrange Savings Bank, sixteen hundred and thirty-five and $\frac{25}{100}$ dollars, for value received, negotiable and payable
169 without defalcation or discount, with interest at the rate of ten per cent. per annum from due till paid.

G. H. SIMPSON.
W. Y. WILLIAMS.
R. N. BLACKWOOD.

[Revenue stamp $0.85, cancelled.]

(Endorsed on the back:) G. H. SIMPSON.

And afterwards, to wit, on the 16th day of December, A. D. 1872, there was issued from the office of the clerk of the circuit court for Lewis County a summons which is in the words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court.

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon George H. Simpson, William Y.
170 Williams, and Robert N. Blackwood, if they be found in your county, to appear before our circuit court to be holders within and for the county of Lewis at the court-house in the town of Monticello, in said county, on the first day of the next term thereof, to be be-

gun and held on the first Monday in January next, A. D. 1873, then and there before the judge of our said court to answer the petition of the Lagrange Savings Bank (a certified copy of which said petition is hereunto annexed), and have you then and there this writ with the return of your action thereupon.

Witness my hand as clerk of our said court, and the seal thereof.

Done at office in Monticello, in the county aforesaid, on the 16th day of year A. D. 1872.

[SEAL.] THOMAS B. JEFFRIES, *Clerk.*

171 Upon which said writ of summons appears the following return of the sheriff:

Executed the within writ in the county of Lewis, on the 19th day of December, A. D. 1872, by delivering a copy of this writ with accompanying petition to George H. Simpson, and by delivering a copy of this writ to William Y. Williams and Robert N. Blackwood.

Fees, $3.00.

W. G. ALLEN,
Sheriff of Lewis County, Missouri,
By O. K. CALDWELL,
Deputy.

Afterwards, to wit, on the 7th day of January, A. D. 1873, at a circuit court continued and held at the court-house in the town of Monticello, in Lewis County aforesaid, it being the January term, 1873, of said court, before the honorable E. V. Wilson, judge thereof, the
172 following, among other proceedings, were had, to wit:

LAGRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS.

At this day come said defendants, by their attorneys, and file demurrer to plaintiff's petition.

Which said demurrer is in words and figures as follows, to wit:

THE LAGRANGE SAVINGS BANK
vs.
GEO. H. SIMPSON, W. Y. WILLIAMS, AND R. N. BLACKWOOD.

Now come the defendants above named, and answer to the petition of the plaintiff in the above entitled cause, and assigns the following causes therefor:

1st. Said petition does not show that plaintiff has legal capacity to sue, in that it is not stated therein that said plaintiff professes corporate power.

173 2nd. There is a defect of parties apparent upon the face of said petition, in that it does not appear therefrom that there is any legal plaintiffs in said action.

JOHN FOSTER,
Attorney for Defendants.

Afterwards, to wit, on the 10th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following proceedings among others were held, to wit:

LAGRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS. } On note.

At this day comes said parties, by their attorneys, and thereupon defendants withdraw their demurrer, filed in this cause, and file their answer to plaintiff's petition.

Which answer is in words and figures as follows, to wit:

Answer.

THE LAGRANGE SAVINGS BANK, PL'FF,
vs.
GEO. H. SIMPSON, WILLIAM Y. WILLIAMS, & Robert N. Blackwood, def'ts.

174 Now comes the defendants above named and for answer to the petition of the plaintiff in the above entitled cause say that they admit that they executed said promissory note filed with said plaintiff's petition; admit that said Geo. H. Simpson, the payer of said note, endorsed the same to the plaintiff, as in said plaintiff's petition averred, but these defendants expressly deny that said note is still the property of the plaintiff, for these defendants charge the fact to be that subsequent to the execution and assignment of said note, and prior to the commencement of this action, the said Lagrange Savings Bank became extinct as a person in law by being merged into an association organized for the purpose of carrying on the business of banking, at the city of Lagrange, in the State of Missouri, under the name of the
175 First National Bank of Lagrange, organized under an act of Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, and that upon the merging of said Lagrange Savings Bank into the First National Bank of Lagrange as aforesaid all the rights, credits, and effects, stock and moneys of, and belonging to, said Lagrange Savings Bank, including the said note sued upon in this action, become a part of the capital stock and property of said First National Bank of Lagrange, and so still remains the property of said national bank.

Whereupon defendants ask judgment for their costs and charges in this behalf laid out and expended.

JOHN FOSTER,
Attorney for Defendants.

Afterwards, to wit, on the 11th day of Jan., A. D. 1873, at a
176 circuit court held as aforesaid, the following among other proceedings were had at said term, to wit:

LAGRANGE SAVINGS BANK, PL'FF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS. } On note.

At this day comes said parties, by their attorneys, and on motion leave is granted said plaintiff to file her reply herein thirty days before the next term of this court, until which time this cause is continued.

Afterwards, to wit, on the 5th day of May, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings was had at said term, to wit:

LAGRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS.

At this day comes the plaintiff, by its attorney, and files reply to defendant's answer.

177 Which reply is in words and figures as follows, to wit:

THE LAGRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS and Robert N. Blackwood, defendants.

In the circuit court Lewis County.

Plaintiff comes and replys to defendants' answer and says that the note in suit in this cause is the property of the plaintiff, and denies that the Lagrange Savings Bank has become extinct as an association, and denies that it has been merged into the First National Bank of Lagrange, and denies that all the rights, credits, effects and moneys belonging to said Lagrange Savings Bank, including the note sued upon in this suit, become a part of the capital stock and property of said First National Bank of Lagrange and still remains the property of said national bank.

And the plaintiff, for further reply, says the Lagrange Savings
178 Bank still maintains its organization, in fact, with a paid-up capital of upwards of $30,000.00.

B. ALVERSON,
Attorney for Plaintiff.

And afterwards, to wit, on the 12th day of May, A. D. 1873, at a circuit court continued and held as aforesaid, the following, among other proceedings, was had at said term, to wit:

LAGRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS and Robert N. Blackford, def'ts. } On note.

At this day comes said parties, by their attorneys, and this cause coming on to be heard on motion, the same is submitted to the court, and the court finds for the plaintiff the sum of eighteen hundred and ninety-four dollars and twenty-one cents. It is therefore considered by the court that the plaintiff do have and recover of defendants the sum of eighteen hundred and ninety-four dollars and twenty-one cents, with interest thereon at the rate of ten per cent. per annum, to-
179 gether with her costs and charges herein laid out and expended, and that she have execution therefor.

And afterwards, to wit, on the 22nd day of December, A. D. 1874, there was issued from the office of the clerk of the circuit court for Lewis County an execution upon said judgment as aforesaid, which is in the words and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court of said county.

The State of Missouri to the sheriff of Lewis County greeting:

Whereas the Lagrange Savings Bank, on the 12th day of May, in the year of our Lord eighteen hundred and seventy-three, at our circuit court for said county of Lewis, recovered against George H. Simpson, William Y. Williams and Robert N. Blackwood the sum of eighteen hundred and ninety-four dollars and 21 cents, and also plaintiff's
180 costs, which have been taxed the sum of fifteen dollars and seventy cents: These are, therefore, to command you that of the goods and chattels, lands and tenements of the said George H. Simpson, William Y. Williams and Robert M. Blackwood you cause to be made the debt and costs aforesaid, and that you have the same before the judge of our said court on the first Monday in March next, to satisfy said debt and costs, and have you then and there this writ, certifying how you have executed the same.

Witness Thomas B. Jeffries, clerk of our said court, with seal thereof. Done at office in Monticello, in the county aforesaid, on this 22nd day of year A. D. 1874.

[SEAL.] THOMAS B. JEFFRIES, *Clerk*,
By P. C. AGER, *D. C.*

Upon and attached to said execution appears the levy and report of sale of real estate made by the sheriff of Lewis County, Missouri.
181 Received by me this 22nd day of December, 1874.

W. M. MOORE, *Sheriff.*

Executed the within writ in the county of Lewis on the 10th day of February, 1875, by levying upon and seizing on the property of the defendant William Y. Williams in and to the following described real estate, to wit: Commencing at the southwest corner of the southeast quarter of section 25, township 61, range 6 west, at letter "D" in county surveyor's plat No. 124, running thence north 31 $\frac{68}{100}$ to a stone, letter "C;" thence east 17 $\frac{39}{100}$ chains to a stone, letter "M;" thence south to a stone, letter "N," 16 $\frac{95}{100}$ chains; thence west to a stone 9 $\frac{94}{100}$ chains; thence south to a stone 14 $\frac{93}{100}$ chains; thence west to a stone the place of beginning, 8 $\frac{16}{100}$ chains, containing 42 acres more or less; also upon the property of the defendant Robert N. Blackwood, to wit, lots No. 6 and 7, in block 6, in Wright and Shropshire's addition to the city of Lagrange, all lying and being in Lewis County, Missouri.

Rec'd $7.65.

W. M. MOORE,
Sheriff Lewis County, Missouri.

182 I, W. M. Moore, sheriff of Lewis County, Missouri, hereby certify that in compliance with the command of the within execution, having prior to the day of sale hereinafter mentioned given at least twenty days' notice of the time, terms, and place of sale, together with a description of the real estate to be sold, and where situated, as the law directs, by publishing notices in the Lagrange Democrat, a newspaper published weekly regularly in my said county, I did agreeably to said notices on the 11th day of March, 1875, between the hours of nine in the forenoon and five in the afternoon of that day, at the court-house

door in the town of Monticello in said county, and while the circuit court of said county was in session, expose to sale at public vendue to the highest , for cash, under this and four other executions, two to the La-
grange Savings Bank and two in favor of First National Bank of
183 Quincy, all the right, title, and interest of the within named defendant William Y. Williams of, in, and to the real estate hereinafter described and Uri I. Penfield, in trust for the use and benefit of the execution creditors, being the highest bidder for the real estate, to wit, commencing at the southwest corner of the southeast quarter of section 25, township 61, range 6 west, at letter "D" on county surveyor's plat No. 124, running north $30\frac{60}{100}$ chains to a stone, letter "C;" thence east $17\frac{32}{100}$ chains to a stone, letter M: thence south to a stone, letter "N," $16\frac{90}{100}$ chains; thence west to a stone $9\frac{4}{100}$ chains; thence south to a stone $14\frac{70}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres more or less, for the sum of twenty-five dollars, having bid therefor the sum of twenty-five dollars, become the purchaser thereof, and the same was stricken off and sold
to Uri S. Penfield for that sum, of which I have applied the same
184 to part of the payment of the costs of this execution and the other four above-named executions. I therefore return the within writ of execution not satisfied.

W. M. MOORE,
Sheriff of Lewis County, Missouri.

STATE OF MISSOURI,
County of Lewis, ss:

I, Charles R. Magee, clerk of the circuit court in and for the county of Lewis aforesaid, hereby certify that the foregoing pages contain a full, true, and complete copy of the record and proceeding had in said court in the above entitled cause as fully as the same appears of record and on file in my said office.

Witness my hand as clerk and the seal of said court. Done at office in Monticello on this the 25th day of Sept., A. D. 1877.

CHARLES R. MAGEE, *Clerk.*

185, 186

187 Said Exhibit G, referred to in the foregoing amended bill, is in words and figures following, to wit:

EXHIBIT G.

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that heretofore, to wit, on the 16th day of December, 1872, there was filed in the office of the clerk of the circuit within and for the county of Lewis, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

THE LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, John S. Motter and Joseph A. Hay, def'ts.

In the Lewis County circuit court. January term, 1873.

Plaintiff states that defendants by their promissory note, herewith

filed, dated February 1st, 1872, promised, for value received, to pay to plaintiff the sum of three thousand seven hundred and fifty-two and $\frac{85}{100}$ dollars ninety days after the date thereof, with ten per cent. interest after maturity, which note and interest thereon are yet due plaintiffs, and for which plaintiffs ask judgment.

I. B. ALVERSON,
Att'y for Pl'ff.

188 And attached to and a part of said petition is a note in the words and figures following, to wit:

$3,752\frac{85}{100}$.

LA GRANGE, MO., *Feb'y 1st*, 1872.

Ninety days after date we, or either of us, promise to J. N. Hagood, cash'r. or order, at the La Grange Savings Bank, thirty-seven hundred and fifty-two $\frac{85}{100}$ dollars, for value received, negotiable and payable without defalcation or discount, with interest at the rate of ten per cent. per annum from maturity till paid.

[U. S. int'r. revenue stamp, $1.90, cancelled.]

G. H. SIMPSON.
W. Y. WILLIAMS.
JOHN S. MOTTER.
J. A. HAY.

And afterwards, to wit, on the 16th day of December, A. D. 1872, there was issued from the office of the clerk of the circuit court, for Lewis County a summons in the word and figures as follows, to wit:

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court.

The State of Missouri to the sheriff of Lewis County, greeting:

We command you to summon George H. Simpson, William Y.
189 Williams, John S. Motter and Joseph A. Hay, if they be found in your county, to appear before our circuit court, to be holden within and for the county of Lewis at the court-house in the town of Monticello, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in January next, A. D. 1873, then and there before the judge of our said court to answer the petition of the La Grange Savings Bank (a certified copy of which said petition is hereunto annexed), and have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court, and the seal thereof.

Done at office in Monticello, in the county aforesaid, on the 16th day Dec., A. D. 1872.

[SEAL.] THOS. B. JEFFRIES, *Clerk.*
By P. C. AGEE, *Deputy.*

Upon which said writ appears the following endorsement, to wit:

Executed the within writ in the county of Lewis on the 19th day of December, A. D. 1872, by delivering a copy of same, with the
190 accompanying petition, to George H. Simpson, and by delivering

a copy of the writ to William Y. Williams, John S. Motter and Joseph A. Hay.

W. G. ALLEN,
Sheriff of Lewis Co., Mo.,
By A. K. CALDWELL,
Deputy.

And afterwards, to wit, on the 7th day of January, A. D. 1873, at a circuit court continued and held at the court-house in the town of Monticello, it being during the January term, 1873, of the circuit court of Lewis County, before the Hon. E. V. Wilson, judge, the following among other proceedings were had, to wit:

THE LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS.

At this day come said defendants by their attorneys, and file their demurrer to plaintiff's petition.

Which said demurrer is in words and figures as follows, to wit:

THE LA GRANGE SAVINGS BANK,
vs.
G. H. SIMPSON, W. Y. WILLIAMS, JOHN S. Motter and Joseph A. Hay.

Now comes the def'ts above named and demur to the petition
191 of the plaintiff, and assign the following reasons therefor: 1st. Said petition does not show that plaintiff has legal capacity to sue. 2nd. There is a defect of parties apparent upon the face of said petition, in that it does not appear therefrom that there is any legal plaintiff in said action. 3rd. Said petition does not state facts sufficient to constitute a cause of action, in that said petition does not show plaintiff to be entitled to sue upon the note filed therewith. Wherefore defendants ask judgment.

JOHN FOSTER,
Att'y for Def'ts.

And afterwards, to wit, on the 10th day of January, A. D. 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had at said term, to wit:

LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAMS, MOTTER and Hay, defendants.

At this day come said parties by their attorneys, and the demurrer to plaintiff's petition coming on to be heard is on motion submitted
192 to the court, and the court sustains said demurrer as to the third cause of action, and on the further motion leave is granted plaintiff to amend petition during this term of the court.

And afterwards, to wit, on the day and year last aforesaid, the following proceedings were had, to wit,

LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS.

At this day comes the plaintiff by its attorney, and files amended petition in this cause, which amended petition is as follows, to wit:

STATE OF MISSOURI,
Lewis County, ss:

THE LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, John S. Motter and Joseph A. Hay, defendants.

Lewis County circuit court.

Plaintiff comes by leave of court and files this amended petition, and states that defendants by their promissory note herewith filed
193 dated February 1st, 1872, promised for value received to pay J. N. Haygood, cashier, the sum of three thousand seven hundred and fifty and $\frac{75}{100}$ dollars ninety days after the date thereof, with ten per cent. interest after maturity. Plaintiff avers that J. N. Hagood is the cashier of the La Grange Savings Bank, and was at the date of said note, and that plaintiff is the owner and holder of said note, which note and all interest thereon are yet due plaintiff, and for which plaintiff asks judgment.

I. B. ALVERSON,
Att'y for Pl'ff.

On the 10th day of January, A. D. 1873, the defendants by their attorney, and file their answer to plaintiff's petition, which is as follows, to wit:

LA GRANGE SAVINGS BANK, PLAINTIFF,
vs.
GEORGE H. SIMPSON ET AL., DEFENDANTS.

Now come the defendants above named and for answer to the petition of plaintiff in the above-entitled cause say that they admit that they executed the promissory note filed with said plaintiff's
194 petition, but that defendants expressly deny that said note is now the property of said plaintiff or that the said plaintiff is the legal owner or holder thereof. And that defendants, further answering, say that subsequent to the execution of said note and prior to the commencement of this action the said La Grange Savings Bank became extinct as a person in law by being organized and merged into an association organized for the purpose of carrying on the business of banking at the city of La Grange, in the State of Missouri, under the name of the First National Bank of La Grange, organized under "An act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds," and to provide for the circulation and redemption thereof, approved June 3d, 1864, and has had no existence in law as a corporation since such merge.
195 And these defendants, further answering, say that upon the

merging of said savings bank into the 1st National Bank of La-Grange, as aforesaid, all the stock, moneys, rights, credits and effects of and belonging to said savings bank, including the said note sued upon in this action, become by the act of said plaintiff a part of the capital stock of said 1st National Bank and the property of said national bank, and so still remains. Wherefore plaintiff asks judgment.

JOHN FOSTER,
Att'y for Defts.

And afterwards, to wit, on the 11th day of January, 1873, at a circuit court continued and held as aforesaid, the following among other proceedings were had, to wit:

LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAMS, MOTTER, and Hays, defendants.

At this day come said parties by their attorneys, and on motion leave is granted said plaintiff to file her reply to defendants' answer thirty days before the next term of this court, until which time this cause is continued.

196 And afterwards, to wit, on the 5th day of May, A. D. 1873, at a circuit court held at the court-house in the town of Monticello, the following among other proceedings were had, to wit:

LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON ET AL., DEFENDANTS.

At this day comes the plaintiff by *by* its attorney, and files reply to defendants' answer.

Which reply is in words and figures as follows, to wit:

LA GRANGE SAVINGS BANK, PLAINTIFF,
vs.
GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, JOHN S. MOTTER, & JOSEPH A. HAY, defendants.

In Lewis County circuit court.

And for reply to answer of defendant, plaintiff avers that the note in suit is the property of plaintiffs, and that the plaintiffs is the legal owner there*for*. Plaintiff denies that said La Grange Savings Bank became extinct as an association, and was merged into an association organized for the purpose of carrying on the business of banking,
197 at the city of La Grange, under the name of the First National Bank of La Grange, and says that said La Grange Savings Bank has kept up its organization.

Plaintiff, further replying, denies that all its moneys, stock, rights and credits of and belonging to said savings bank, including the said note sued on in this action, became by the act of said pl'ff a part of the capital stock of the 1st National Bank, and says that the note in suit is the property of pl'ff. Plaintiff, further replying, says its organization

is complete under the general statutes of the State of Missouri, and that the note in suit, with the interest thereon, is yet due pl'ff from defendants, and for which pl'ff asks judgment.

I. B. ALVERSON,
Att'y for Pl'ff.

Afterwards, to wit, on the 12th day of May, A. D. 1875, at circuit court continued and held as aforesaid, among others the following proceedings were had, to wit:

LA GRANGE SAVINGS BANK, PLAINTIFF,
against
GEORGE H. SIMPSON, WILLIAM Y. WILLIAMS, JOHN S. MOTTER, and JOSEPH A. HAY, defendants.

198 At this day come said parties by their attorneys, and this cause now coming on to be heard, on motion the same is submitted to the court upon the petition and exhibits, and the court finds for said plaintiff the sum of four thousand one hundred and thirty-eight dollars and 55 cents. It is therefore considered by the court that the plaintiff do have and recover of the defendants the sum of four thousand one hundred and thirty-eight dollars and fifty-five cents, with interest thereon at the rate of ten per cent. per annum, together with her costs and charges herein laid out and expended, and that execution issue therefor

Afterwards, to wit, on the 22nd day of December, 1874, there was issued from the office of the clerk of the circuit court for Lewis County an execution, which said execution is as follows, to wit:

STATE OF MISSOURI, *County of Lewis:*

In the circuit court of said county.

The State of Missouri to the sheriff of Lewis County, greeting:

199 Whereas the La Grange Savings Bank on the 12th day of May, in the year of our Lord eighteen hundred and seventy-three, at our circuit court for said county of Lewis, recovered against George H. Simpson, William Y. Williams, John S. Motter, and Joseph A. Hay the sum of four thousand one hundred and thirty-eight dollars and 55 cents, and also plaintiff's costs, which have been taxed the sum of sixteen dollars and 55 cents: these are therefore to command you that of the goods and chattels, lands and tenements of the said George H. Simpson, William Y. Williams, and John Motter you cause to be made the debt and costs aforesaid, and that you have the same before the judge of our said court on the first Monday in March next to satisfy said debt and costs. And have you then and there this writ, certifying how you have executed the same.

Witness, Thomas B. Jeffries, clerk of our said court, with the seal thereof.

200 Done at office in Monticello, in the county aforesaid, on this 22d day of Dec'r, A. D. 1874.

THOS. B. JEFFRIES, *Clerk.*
By P. C. AGEE, *D. C.*

Upon said execution appears the levy and report of sale of real estate made by the sheriff of Lewis County, Missouri, to wit:

Received by me this 22nd day of December, A. D. 1874.

W. M. MOORE, *Sheriff.*

Executed the within writ in the county of Lewis on the 10th day of February, 1875, by levying upon and seizing as the property of the defendant William Y. Williams the real estate in the advertisement here attached, commencing at the SW. corner of the SE. q'r of section 25, town. 61, range 6 west, at letter D, county surveyor's plat No. 124, running thence N. $31\frac{60}{100}$ chains to a stone, letter C; thence E. $17\frac{39}{100}$ chains to a stone, letter M; thence south to stone, letter N, $16\frac{90}{100}$ chains;
201 thence west to a stone $9\frac{25}{100}$ chains; thence south to a stone $14\frac{70}{100}$ chains; thence west to a stone, the place of beginning, $8\frac{16}{100}$ chains, containing 42 acres, more or less. Also upon the property of the defendant Robert N. Blackwood, to wit, lots No. 6 and 7, in block 6, in Wright & Shropshire's addition to the city of La Grange, all lying and being in Lewis County, Missouri.

I, W. M. Moore, sheriff of Lewis County, Missouri, hereby certify that in compliance with the command of the within execution, having prior to the day of sale hereinafter mentioned given at least twenty days' notice of the terms, time, and place of sale, together with a description of the real estate to be sold, and where situated, as the law directs, by publishing notices in the La Grange Democrat, a newspaper published weekly regularly in my said county, I did agreeably to said notices on the tenth day of March, 1875, between the hours of nine in the fore-
202 noon and five in the afternoon of that day, at the court-house door in the town of Monticello, in said county, and while the circuit court of said county was in session, expose to sale at public vendue to the highest bidder, for cash, under this and three other executions, one in favor of the First National Bank of Quincy and two in favor of the La Grange Savings Bank, all the right and interest of the within-named defendant William Y. Williams and Robert N. Blackwood of, in, and to the real estate hereinafter described; and Uri S. Penfield, in trust for the use and benefit of the execution creditors, being the highest bidder for the real estate, to wit, commencing at the SW. corner of the SE. q'r of sec. 25, town. 61, range 6 west, at letter D on county surveyor's plat No. 124, running north $31\frac{80}{100}$ chains to a stone, letter C; thence east $17\frac{39}{100}$ to a stone, letter M; thence south to a stone, letter N, $16\frac{60}{100}$ chains; thence west to a stone, $9\frac{4}{100}$ chains; thence south to a stone, $14\frac{70}{100}$ chains; thence
203 west to a stone, the place of beginning, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all in Lewis County, Mo., and being the property of said defendant William Y. Williams; also lots 6 & 7 in block 6 in Wright and Shropshire's addition to the city of La Grange, Mo., being the property of R. N. Blackwood; and Uri S. Penfield having bid therefor the sum of twenty-five dollars for the 42-acre tract property of the defendant William Y. Williams, and five dollars each for lots 6 & 7 in block 6 in Wright & Shropshire's addition to La Grange, being the property of the defendant Robert N. Blackwood, and Uri S. Penfield became the purchaser thereof, and the same was stricken off and sold to the said Uri S. Penfield in trust for execution creditors for that sum, of which I have applied thirty-five dollars to payment of costs, I therefore return the within writ of execution not satisfied.

W. M. MOORE,

Sheriff of Lewis Co., Missouri.

STATE OF MISSOURI,
County of Lewis, ss :

204 I, Charles R. McGee, clerk of the circuit court in and for the county of Lewis aforesaid, certify that the foregoing pages contain a full, true, and complete copy of the record and proceedings had in said court in the above entitled cause as fully as the same appears of record and on file in my said office. Witness my hand as clerk and the seal of said court. Done at office in Monticello this the 25th day of September, A. D. 1877.

[SEAL.] CHAS. R. McGEE, *Clerk.*

Said Exhibit H, referred to in the foregoing amended bill, is in words and figures following, to wit :

EXHIBIT H.

STATE OF MISSOURI, *County of Lewis :*

In the recorder's office.

Among other instruments of writing on record in said office is the following, in words and figures as follows, to wit :

Sheriff's deed.

To all whom these presents shall come.

I, William M. Moore, sheriff of Lewis County, State of Missouri, send greeting:

205 Whereas on May 10, A. D. 1873, judgment was rendered in the circuit court of the county of Lewis & State of Missouri in favor of the First National Bank of Quincy, and against Jacob R. Harris, George H. Simpson, William Y. Williams, and Robert N. Blackwood, for the sum of four thousand one hundred and ten dollars and forty-eight cents, upon which judgment an execution issued from the clerk's office of said court in favor of the First National Bank of Quincy, and against Jacob R. Harris, George A. Simpson, William Y. Williams, and Robert N. Blackwood, dated Dec. 22, A. D. 1874, directed to sheriff of Lewis County, Missouri, and the same was to me delivered on Dec. 22, A. D. 1874; and whereas on May 12, A. D. 1873, judgment was rendered in the circuit court of said county of Lewis and State of Missouri in favor of the La Grange Savings Bank, and against George H. Simpson, William Y. Williams, Robert N. Blackwood, for the sum of eighteen hundred and ninety-four dollars and twenty-one cents,
206 upon which judgment an execution issued from the clerk's office of the said county in favor of the said La Grange Savings Bank, and against the said George H. Simpson, William Y. Williams, and Robert N. Blackwood, dated Dec. 22, A. D. 1874, directed to the sheriff of Lewis County, State of Missouri, and the same was to me delivered on Dec. 22, A. D. 1874; and whereas on May 12, A. D. 1873, judgment was rendered in the circuit court of Lewis County, State of Missouri, in favor of the La Grange Savings Bank, and against George H. Simpson, William Y. Williams, John S. Motter, and Joseph A. Hay, for the sum of four thousand one hundred and thirty-eight dollars and fifty-five cents, upon which judgment an execution issued the clerk's

office of said county in favor of the said La Grange Savings Bank, and against the said George H. Simpson, William Y. Williams, John S. Motter, and Joseph A. Hay, dated Dec. 22, A. D. 1874, and directed to the sheriff of said county of Lewis, and the same
207 was to me delivered on Dec. 22, A. D. 1874; and whereas on March 5, A. D. 1874, judgment was rendered in circuit court of said county, State of Missouri, in favor of the First National Bank of Quincy, and against Jacob R. Harris, William Y. Williams, Robert N. Blackwood, and John Sisler, for the sum of eighteen thousand one hundred and twelve dollars and fifty cents, upon which judgment an execution issued from the clerk's office of said county in favor of the said First National Bank of Quincy, and against the said Jacob R. Harris, William Y. Williams, Robert N. Blackwood, and John Sisler, dated Dec. 22, A. D. 1874, and directed to the sheriff of Lewis County, State of Missouri, and the same was to me delivered on Dec. 22, A. D. 1874; and whereas on March 5, A. D. 1874, judgment was rendered in the circuit court of Lewis County, State of Missouri, in favor of the First National Bank of Quincy, and against Jacob R. Harris, William Y. Wil-
208 liams, and John Sisler, for the sum of four thousand five hundred and ninety-four dollars & twenty-seven cents, upon which judgment an execution issued from the clerk's office of said county in favor of the First National Bank of Quincy, and against Jacob R. Harris William Y. Williams, and John Sisler, dated Dec. 22, A. D. 1874, and directed to the sheriff of Lewis County, State of Missouri, and the same was to me delivered on Dec. 22, A. D. 1874, by virtue of which said five executions, I, the said sheriff, did Feb. 10, 1875, A. D., levy upon and seize all the right, title, interest, and estate of the said William Y. Williams and Robert N. Blackwood of, in, and to the following described real estate, to wit, commencing at the southwest corner of the southeast quarter of section twenty-five (25), township sixty-one (61), range six (6) west, at letter "D" on county surveyor's plat No. 124 running north $31\frac{50}{100}$ chains to a stone, letter "C;" thence east $17\frac{30}{100}$ chains to a stone, letter "M;" thence south $16\frac{40}{100}$ chains to a stone,
209 letter "N;" thence west to a stone $9\frac{4}{100}$ chains; thence south $14\frac{90}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all being the property of the said defendant William Y. Williams; also upon the property of defendant Robert N. Blackwood, to wit, lots No. six and seven in block six, in Wright and Shropshire's addition to the city of La Grange, all lying & being in the said county of Lewis and State of Missouri, and having previously to the day of sale hereinafter mentioned given at least twenty days' notice of the time and place of said sale and of the real estate to be sold, and where situated, as the law directs, by advertisement in the La Grange Democrat, a weekly newspaper published in my said county, by virtue of which said five executions and notice I did on March 10, A. D. 1875, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of same day, agree-
210 ably to said notice, at the court-house door in my said county of Lewis, at the March term thereof, A. D. 1875, expose to sale at public auction for ready money all the right, title, interest, and estate of the said William Y. Williams and Robert N. Blackwood of, in, and to the following described real estate, to wit, commencing at the southwest corner of the southeast quarter of section 25, township 61, range 6 west, at letter "D" on county surveyor's plat no. 124, running north $31\frac{50}{100}$ chains to a stone, letter "C;" thence east $17\frac{30}{100}$ chains to a stone, letter "M;" thence south to a stone, letter "N," $19\frac{50}{100}$ chains;

thence west to a stone $9\frac{4}{100}$ chains; thence south to a stone $14\frac{55}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains, containing 42 acres, more or less, all being the property of said William Y. Williams; and Uri S. Penfield, being the highest and best and last bidder, became the purchaser in trust and for the use and benefit of execution creditors of the above described real estate for the
sum and price of twenty-five dollars; also lots number six
211 and seven in block No. six, in Wright and Shropshire's addition to the city of La Grange, all being the property of the said Robert N. Blackwood; and Uri S. Penfield being the highest and best and last bidder, became the purchaser in trust & for the use and benefit of the execution creditors, for the sum of five dollars each, amounting in the aggregate to the sum of ten dollars, and the said real estate was struck off and sold to the said Uri S. Penfield, in trust for the use and benefit of executions creditors, for said price and sum: Now, therefore, in consideration of the premises and of the sum of thirty-five dollars to me, the said sheriff, in hand, paid by the said Uri S. Penfield, in trust for the use & *use* of execution creditors, and the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, William M. Moore, sheriff as aforesaid, do hereby assign, transfer, and convey to the said Uri S. Penfield, in trust for the use &
212 benefit of execution creditors, all the right, title, interest, and estate of the said William Y. Williams and Robert N. Blackwood of, in, and to the above described real estate that I might sell, as aforesaid, by virtue of the aforesaid five executions and notice, to have and to hold the right, title, interest, & estate hereby conveyed unto the said Uri S. Penfield, in trust for the use and benefit of execution creditors, their heirs and assigns forever, with all the rights and appurtenances thereto belonging.

In witness whereof I, William M. Moore, sheriff of the county of Lewis and State of Missouri, have hereto set my hand and affixed my seal this seventh day of September, A. D. 1875.

W. M. MOORE. [SEAL.]

STATE OF MISSOURI,
County of Lewis, ss:

In the circuit court, Lewis County, Missouri. September term, A. D. 1875.

Be it remembered that on this 9th day of September, in the year
213 of our Lord 1875, before the Hon. John C. Anderson, judge of the circuit court within and for the county aforesaid, came into open court William M. Moore, personally known to the said judge to be the same person whose name is subscribed to the foregoing instrument of writing as having executed the same, and also known to be the sheriff of the county of Lewis aforesaid, and then and there, in open court, before the said judge, acknowledged the said instrument to be his act and deed for the purposes therein mentioned, the certificate of said acknowledgment being ordered by the said court to be endorsed by the clerk on this deed.

In testimony whereof I, Chas. R. McGee, clerk of our said court, have hereunto set my hand and affixed the seal of said court. Done at office, in Monticello, in the county aforesaid.

CHAS. R. McGEE, *Clerk.*

Filed for record Oct. 15th, at 11 o'clock a. m., 1875. Chas. R. Magee, recorder, by Joseph Fiber, deputy.

STATE OF MISSOURI,
County of Lewis, ss:

214 I, Chas. R. Ma Gee, recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed from W. M. Moore, sheriff, to Uri S. Penfield, as the same appears of record in my office.

Witness my hand as recorder, and the seal of my office. Done at office, in Monticello, this 26th day of September, 1877.

[SEAL.] CHAS. R. MAGEE, *Clerk.*

215 And afterwards, to wit, on February 6th, 1878, there was filed in the office of the clerk of said United States circuit court the following answer of Sarah C. and William Y. Williams, to wit:

Answer of Sarah C. and William Y. Williams.

UNITED STATES OF AMERICA,

Eastern District of Missouri, ss:
In the United States circuit court for the eastern district of Missouri.

The joint and several answer of William Y. Williams and Sarah C. Williams, two of several defendants to the so-called amended bill filed in said court by Uri S. Penfield and the First National Bank of Quincy, Illinois, complainants on the chancery side of said court, against them and The La Grange Savings Bank.

These defendants now and at all times hereafter saving to themselves all and all manner of benefit or advantage, by exception or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally answer and say that they are informed and verily believe truly, and therefore admit the fact to be, that the First National Bank of Quincy was and is a corporation as in said bill alleged.

These defendants, further answering, say that on the eleventh day of February, A. D. 1868, the said William Y. Williams was not indebted in a sum of money exceeding fifteen hundred dollars, and that such indebtedness was fully paid and discharged, or nearly so, long prior to the contracting by the said William Y. Williams of any indebtedness or becoming liable in any way for the indebtedness upon which the judgments or either of them in said bill mentioned were recovered.

216 These defendants, further answering, say that on the eleventh day of February, A. D. 1868, the defendant William Y. Williams was the owner, free from incumbrance, of real and personal property situate in the county of Lewis and State of Missouri, where these defendants then resided and still reside, of the value of twelve thousand dollars and over, the precise value of which they cannot now state, exclusive of the real estate hereinafter in this answer described and in said bill referred to.

These defendants, further answering, say that it is not true as alleged in said bill that the defendant William Y. Williams was on the eleventh day of February, A. D. 1868, insolvent, but on the contrary these defendants state and charge the fact to be on the eleventh day of February, A. D. 1868, and also at the time he purchased said land and

made the improvements thereon, the said William Y. Williams was worth in property, situate in said Lewis County, Missouri, in his own right and name, of the value of twelve thousand dollars and more over and above all of his then existing debts and liabilities.

These defendants, further answering, say that prior to the said eleventh day of February, A. D. 1868, and on or about the twentieth day of September, A. D. 1867, he purchased twelve acres of said land for an agreed price and sum of eighteen hundred dollars; and that afterwards and on or about the said eleventh day of February, A. D. 1868, said William Y. Williams being the owner of a house and three lots in the city of La Grange, in said Lewis County, the same then being of the value of three thousand dollars or thereabouts, and then being desirous of purchasing the remainder of said land, it was agreed between the said William Y. Williams and James H. Skinner, then the owner of the same, to exchange said house and lots for said remainder
217 of said land, and thereupon these defendants caused the said house and lots to be conveyed to said James H. Skinner; and that at the time of such conveyance the said William Y. Williams was a householder, the head of a family, and resided with the same in the said house as and for his and their homestead, such family consisting of the defendant Sarah E. Williams, his wife, and four children of theirs; that the object and purpose of making said purchases of land was to procure another homestead, the location of which would be more desirable than the one which they then resided in, and for no other purpose; and that for the consideration aforesaid and at the instance of the defendant William Y. Williams, for the purposes aforesaid and none other, said land was conveyed to his said wife the said Sarah C. Williams by the said James H. Skinner.

These defendants, further answering, say that in the early part of the year A. D. 1868 he, the said William Y. Williams, commenced to erect a dwelling house upon the said land *land* so purchased from said Skinner, and partially completed the same during that year, and moved into said house together with his said family in the latter part of said year and completed said house during the year following.

These defendants further state that they have lived upon and occupied said last mentioned premises as and for their dwelling and homestead, from the time they so moved into said house hitherto, at all times.

These desendants, further answering, say that at the time of the said purchase of said lands lastly purchased, and in the making of said exchange of said house and three lots for the same, said house and lots were estimated as being of the value of three thousand dollars, which, in their opinion, was a fair valuation of the same.

218 These defendants, further answering, say that the said lands so purchased of said Skinner lies upon the bluff of the Mississippi River, in the western part of said city of La Grange, and at the time of said purchase the same was timbered land, having a considerable quantity of timber standing thereon; that after the purchase of the same the said William Y. Williams caused a large portion of said timber to be cut down and made into cord-wood, and realized from the sale of said wood a net profit of from one thousand to twelve hundred dollars, the greater portion of which was used in payment for the construction of said building.

These defendants, further answering, say that the said William Y. Williams during the years A. D. 1868 and A. D. 1869, besides erecting said dwelling house on said lands, erected out-buildings thereon and made other ordinary improvements thereon, such as are necessary for

the convenient use of a homestead; that the improvements so placed upon the premises last mentioned cost the sum of seven thousand dollars or thereabouts, the precise amount of which they cannot now state.

These defendants, further answering, say that the said conveyance of the said house and three lots, or the purchase of said lands and the erection of said dwelling house and out-houses thereon and improvements made thereon, was not had or made on the part of these defendants as between themselves, or either of them, with any person or persons whomsoever with the intent or for the purpose of disturbing, delaying, hindering, or defrauding any creditor or creditors of the said William Y. Williams, or any other person or persons, in the collection of any debt or liability of the said William Y. Williams then existing
219 or in contemplation, or by any covin, fraud, or deceit whatsoever, as between themselves or between themselves and any other person or persons whomsoever, but that the same was an honest transaction wholly without fraud or collusion and made solely for the purpose of procuring another and more desirable homestead for these defendants and their family.

These defendants, further answering, say, that after paying for said land so purchased from the said Skinner, and after paying for the improvements aforesaid made thereon, the said William Y. Williams was, in their opinion, worth from seven to eight thousand dollars in real and personal property over and above all debts and liabilities of his then existing or in contemplation, the property last mentioned being wholly incumbered, and situate in said county of Lewis.

These defendants, further answering, say that the said William Y. Williams was not, on the eleventh day of February, A. D. 1868, or at the time of the conveyance of said land by said Skinner to said Sarah C. Williams, and the making of the said improvements, owing or in any wise indebted to the said First National Bank of Quincy in any sum or sums of money whatsoever, which was not paid off and discharged long prior to the obtaining of any or either of the judgments in the said bill mentioned, and that if in fact he did, at the time of said conveyance to said Sarah C. Williams, owe the said First National Bank any sum or sums of money whatsoever, the same nor any part thereof did not enter into or form a part of said judgments, or either of them, but on the contrary, as above stated, were paid off and discharged long before the recovery of said judgments, or either of them.

220 These defendants, further answering, say that the said lands so purchased of the said James H. Skinner are described as follows, to wit: Commencing at the southwest corner of the southeast quarter of section twenty five, township sixty one, range six west, at letter D on county surveyor's plat No. 124, running thence north thirty one and sixty-hundredths chains to a stone, letter C; thence east seventeen and thirty-nine-hundredths chains to a stone, letter M; thence south to a stone, letter N, sixteen and ninety-hundredths chains; thence west to a stone nine and four-hundredths chains; thence south to a stone fourteen and seventy and one-fourth-hundredths chains; thence west to the place of commencement eight and sixteen-hundredths chains; containing forty-two acres, more or less, and situate in the county of Lewis and State of Missouri, the said land being the same intended to be conveyed by the said James H. Skinner to the said Sarah C. Williams by said deed of date February 11th, A. D. 1860, and being the premises which should have been described in said deed, but by mistake or inadvertance of the conveyancer in drawing said deed, the lands thereby conveyed were therein described as follows, to wit: Commencing at southwest

corner section twenty-five, township sixty-one, range six west, at letter D on county surveyor's plat No. 124, running north $31\frac{60}{100}$ chains to a stone, letter C; thence east $17\frac{39}{100}$ chains to a stone, letter M; thence south to a stone, letter N, $16\frac{90}{100}$ chains; thence west to a stone $9\frac{04}{100}$ chains; thence south to a stone $14\frac{70}{100}$ chains; thence west to a stone, the place of commencement, $8\frac{16}{100}$ chains; containing forty-two acres, more or less, and situate in the county of Lewis and State of Missouri.

These defendants, further answering, say that the error in the
221 description of the premises so intended to be conveyed was afterwards discovered, and that upon the discovery of such error, and on or about the thirteenth day of December, A. D. 1871, for the purpose of correcting such error and to obtain a proper conveyance of the lands so purchased, the said James H. Skinner and Mattie C. Skinner, his wife, by their certain deed of conveyance duly executed, acknowledged, and delivered, at the instance of these defendants conveyed to the defendant Sarah C. Williams the said property so purchased and intended to be conveyed by said first mentioned deed.

These defendants, further answering, say that they have not now before them Exhibits A & B, referred to in said bill, and therefore cannot state whether or not such exhibits are copies of said deeds or not. That said deed of date February eleventh, A. D. 1868, was duly executed, acknowledged, and delivered by the said James H. Skinner and Mattie C. Skinner, his wife, which said acknowledgment was duly certified to, and which said deed was afterwards, and on the 24th day of February, A. D. 1868, duly recorded in the recorder's office in said Lewis County, and such recording duly certified to by him on the back of said deed, a copy of which said deed and of the certificates of acknowledgment and recording thereof is hereto attached, and asked to be made a part of this answer, and marked Exhibit (1) one.

These defendants, further answering, say that said deed, of date thirteenth of December, 1871, was duly executed, acknowledged, and delivered by the said James H. Skinner and Mattie C. Skinner, his wife, which said acknowledgment was duly certified to and was afterward, and on the sixth day of January, 1872, duly recorded in the recorder's
222 office of Lewis County *County*, Missouri, which said record is duly certified to by the recorder of said county, a copy of which said last mentioned deed, together with a copy of said certificate of acknowledgment and record thereof, is hereto attached, marked Exhibit (2) two, and asked to be made a part of this answer.

These defendants, further answering, say that it is true, as alleged in said bill, that the said William Y. Williams was in the business of purchasing, manufacturing, and selling tobacco at the times of said purchases of said land from said Skinner, and that he continued such business for some time thereafter, the precise time they cannot now state, and did during such period contract some debts, the precise amount of which they cannot now state.

These defendants, further answering, say that they admit the recovery of the several judgments against the said William Y. Williams in the court and for the several amounts in said bill stated, and at the times as in said bill stated, and that said court had jurisdiction of the subject-matter of such suits and of the person of said William Y. Williams; but these defendants, and each of them, most positively deny, and say that it is not true, that the said several recoveries and judgments, or either of them, was for any debt or liability whatever contracted or contemplated, owing or expected to be owed, by the said William Y. Will-

iams prior to or at the time of said purchase of said land from said Skinner, and the making of said improvements so made thereon; but on the contrary these defendants so state, and charge the fact to be,
223 that each and every part of the indebtedness or liability of the said William Y. Williams which entered into or formed a part of said judgment, or either of them, was created after said purchase from said Skinner, and after said recording of said deed, of which said Exhibit (1) one is a copy; but these defendants cannot now state whether said judgments, or any part of the same, have been or are satisfied. These defendants, further answering, say that they do not know whether or not execution or executions was or were ever issued upon said judgments or either of them, nor do these defendants, or either of them, know whether or not the said land so conveyed by the said Skinner was ever levied upon under any such execution or executions, if in fact the same ever issued; nor do these defendants, or either of them, know whether the said lands were ever sold, or attempted to be sold, under any such execution or executions, if in fact the same were ever issued; nor do these defendants, or either of them, know whether any deed was executed or delivered to said Uri S. Penfield for said lands.

The said William Y. Williams, severally answering, further says, that it is not true, as charged in said bill, that he purchased said land of said Skinner and made said improvements thereon for the purpose of cheating, defrauding, hindering, delaying, or disturbing any creditor of his existing at the time of such purchase and the making of such improvements, or of any creditor or creditors then contemplated; but that he made such purchase and improvements for the purposes aforesaid, and none other, and that after paying for said lands and
224 improvements he was worth, in property and effects, from seven to eight thousand dollars over and above all his then existing debts and liabilities, and was then solvent and expected to remain so.

Defendant William Y. Williams, further severally answering, says that the said several judgments were recovered upon divers notes executed by him and others, for nothing else, and that in truth and in fact he executed each and every of said notes as security for others and not otherwise.

And these defendants, jointly and severally further answering, say that they deny all and all manner of combination, covin, fraud, deceit, and confederacy whatsoever wherewith they, or either of them, by the said bill are charged; without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and having now fully answered, they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM Y. WILLIAMS AND
SARAH C. WILLIAMS,
By THOROUGHMAN & WARREN,
Their Solicitors.

EXHIBIT 1.

This indenture, made on the eleventh day of February, A. D. one

thousand eight hundred and sixty-eight, by and between James R. Skinner and Mattie C. Skinner, of La Grange, Lewis County,
225 Missouri, parties of the first part, and Sarah C. Williams, of the county of Lewis, in the State of Missouri, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of four thousand eight hundred dollars to them paid by said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, her heirs and assigns, the following described lots, tracts, or parcels of land, lying, being, and situate in the county of Lewis and State of Missouri, to wit: All of commencing at southwest corner section (25) twenty-five, township sixty-one (61), range (6) west, at letter D on county surveyor's plat No. 124, running north $31\frac{60}{100}$ chains to a stone, letter C; thence east $17\frac{90}{100}$ chains to a stone, letter M; thence south to a stone, letter N, $16\frac{39}{100}$ chains; thence west to a stone, $9\frac{04}{100}$ chains; thence south to a stone, $14\frac{73}{100}$ chains; thence west to a stone, the place of commencement, $1\frac{16}{100}$ chains, containing forty-two acres, more or less:

To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in anywise appertaining unto the said party of the second part, and unto her heirs and assigns forever, the said James H. Skinner and Mattie C. Skinner hereby covenanting that they lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by them or those under whom they claim; and that they will warrant and defend the title to said premises unto the said party of the second part, and unto her heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

226 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES H. SKINNER. [SEAL.]
MATTIE C. SKINNER. [SEAL.]

[Internal revenue five (5) dollars stamp.]

On the back of which deed is the following acknowledgment:

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered, that on the eleventh day of February, A. D. 1868, before the undersigned, a notary public, within and for the county of Lewis and State of Missouri, personally came James H. Skinner and Mattie C. Skinner, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned, and the said Mattie C. Skinner, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband, acknowledged that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my

official seal at my office in La Grange, the day and year first above written.

[NOTARIAL SEAL.] THOMAS PRYCE,
Notary Public.

And, also, on the back of which deed is the following recorder's certificate:

General warranty deed from James H. Skinner to Sarah C. Williams.

STATE OF MISSOURI,
Lewis County, ss:

RECORDER'S OFFICE.

227 I, Thos. B. Jeffries, clerk of the circuit court and ex officio recorder of said county, do hereby certify that the within instrument of writing was on the 24th day of February, A. D. 1868, duly filed for record in this office, and is duly recorded in the records of this office, in book, vol. 3, at pages 391, 392, 393.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court at this 24th day of Feb'y, A. D. 1868.

[SEAL OF CIRCUIT COURT.] THOS. B. JEFFRIES,
Clerk and Recorder,
Per P. C. AYEE, *Deputy.*

EXHIBIT 2.

Know all men by these presents, that James H. Skinner and Mattie C. Skinner, his wife, of the city of La Grange, of the county of Lewis, in the State of Missouri, have this day for and in consideration of the sum of four thousand and eight hundred dollars to the said James H. Skinner and Mattie C. Skinner in hand paid by Sarah C. Williams, of the city of La Grange of the county of Lewis, in the State of Missouri, granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Sarah C. Williams the following-described tracts or parcels of land situate in the county of Lewis, in the State of Missouri, that is to say, commencing at the southwest corner of the southeast quarter of section (25) twenty-five, township (61) sixty-one, range (6) six west, at letter D on county surveyor's plat No. 124, running north 31 $\frac{50}{100}$ chains to a stone, letter C; thence east 17 $\frac{33}{100}$ chains to a stone, letter M; thence south to a stone, letter N, 16 $\frac{90}{100}$ chains; thence west to a stone 9 $\frac{04}{100}$ chains; thence south to a stone 14 $\frac{70}{100}$ chains; thence west to the place of commencement, 8 $\frac{56}{100}$ chains, containing forty-two acres, more or less:

To have and to hold the premises hereby conveyed, with all 228 the rights, privileges, and appurtenances thereto belonging, or in anywise appertaining, unto the said Sarah C. Williams, and her heirs and assigns forever, the said James H. Skinner and Mattie C. Skinner, parties of the first part, hereby covenanting to and with the said Sarah C. Williams, party of the second part, her heirs and assigns, for their heirs, executors, and administrators, to warrant and defend the title to the premises hereby conveyed against the lawful claim of any person whatsoever.

In witness whereof we have hereunto subscribed our names and affixed our seals this thirteenth day of December, 1871. This deed is made to correct a deed made on the 11th day of February, eighteen hundred and sixty-eight, and recorded on the 24th day of February,

1868, in vol. 3, pages 391, 392, 393, in circuit clerk's office, in Lewis County, Mo.

JAMES H. SKINNER. [SEAL.]
MATTIE C. SKINNER. [SEAL.]

(At the foot of which said deed appears the following acknowledgement certificate.)

STATE OF ILLINOIS.
County of Lewis, ss:

Be it remembered that James H. Skinner and Mattie C. Skinner, his wife, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the foregoing deed, as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained, and the said Mattie C. Skinner, being by me first made acquainted with the contents of said deed, acknowledged on an examination apart from her said husband that she executed the same and relinquished her dower in the real estate therein mentioned fully and
229 without compulsion or undue influence of her said husband. In testimony whereof I have hereunto set my hand and notarial seal, at my office in La Grange, this thirteenth day of December, A. D. 1871.

THOMAS PRYCE,
Notary Public.

THOMAS PRICE, LA GRANGE, LEWIS CO., MO., NOTARY PUBLIC.

[U. S. internal revenue, five dollars. (Five.) J. H. S. Dec. 13th, 1871.]

Attached to the back of said deed is the following certificate of record, viz:

STATE OF MISSOURI.
County of Lewis, ss:

In the recorder's office.

I, T. B. Jeffries, clerk of the circuit court and ex officio recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the certificate thereon, was filed for record in said office on the 6th day of January, 1872, and that the same is duly recorded in said office in book vol. 11 for recording deeds, &c., at pages 329, 330, & 331.

In witness whereof I have hereto set my hand and affixed the seal of said court. Done at Monticello this 6th day of January, 1872.

[SEAL.] T. B. JEFFRIES,
Recorder.

And afterwards, to wit, on March 2nd, 1878, the following further proceedings were had in said cause, to wit:

Separate answer of La Grange Savings Bank, and replication of complainants to sep. ans. of Wm. Y. & Sarah C. Williams filed.

URI S. PENFIELD ET AL., COMPLAINANTS,
vs.
WILLIAM Y. WILLIAMS ET AL., DEFENDANTS.

This day comes the defendant the La Grange Savings Bank, by its

solicitors, and files its separate answer herein. Also come the complainants, by their solicitors, and file replication to the answer of Wm. Y. and Sarah C. Williams.

230, 231 Which said replication is in words and figures following to wit:

Replication.

Circuit court United States for the eastern district of Missouri.

URI S. PENFIELD & THE FIRST NATIONAL Bank of Quincy, Ills., pl'ffs, *against* W. Y. WILLIAMS & S. A. WILLIAMS, HIS wife, and the La Grange Savings Bank, def'ts. } In the circuit court.

The replication of pl'ff U. S. Penfield and First National Bank of Quincy to the answer of said Wm. Y. Williams & Sarah Williams, his wife.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replications thereto, say that they will aver, maintain, and prove their said bill of complaint to be true, certain, & sufficient in law to be answered unto, and that the said answer of the said def'ts is uncertain, untrue, and insufficient to be replied unto by these repliants.

All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their bill they have already prayed.

DRYDEN & DRYDEN, I. BALVERSON AND H. & F. LIPSCOMB,

Complainants' Solicitors.

Leave given parties to file briefs on or before May 15th, 1878.

And afterwards, to wit, on May 1st, 1878, the following further proceedings were had of record in said cause, to wit:

URI S. PENFIELD ET AL., COMPLAINANTS, *vs.* S. C. WILLIAMS ET AL., DEFENDANTS. } No. 1002.

232 This cause coming on to be heard upon the bill of complaint, answer, replication and proofs, leave is given to parties to file briefs on or before May 15th, 1878.

And afterwards, to wit, on May 15th, 1878, the following further proceedings were had in said cause, to wit:

Cause submitted on briefs.

URI S. PENFIELD ET AL., COMPLAINANTS, *vs.* S. G. WILLIAMS ET AL., DEFENDANTS. } 1002.

This day come the said parties by their solicitors and submit this

cause to the court upon briefs this day filed. And afterwards, to wit, on June 8th, 1878, the following further proceedings were had of record in said cause, to wit:

Decree.

URI S. PENFIELD AND THE FIRST NATIONAL Bank of Quincy, Ills., complainants, *vs.* WILLIAM Y. WILLIAMS, SARAH C. WILLIAMS and La Grange Savings Bank, defendants. } 1002.

This cause came on to be heard at this term, and was argued by counse, and thereupon upon consideration thereof it was ordered, adjudged, and decreed as follows, to wit, that all the right, title, interest and estate which said defendants William Y. and Sarah C. Williams, on the 10th day of March, 1875, had in or to said land, which is described as follows: A tract lying and being in the county of Lewis and State of Missouri, meted and bounded as follows, viz: Commencing at the southwest corner of the southeast quarter of section No. twenty-five (25), in township No. sixty-one (61), in range No. six (6) west, at letter D on comty surveyor's plat No. 124, running north $31\frac{40}{100}$ chains to a stone, leter C; thence east $17\frac{32}{100}$ chains to a stone, letter, M; thence south $16\frac{20}{00}$ chains to a stone, letter N; thence west $9\frac{4}{100}$ chains to a stone, letter ; thence west $8\frac{16}{100}$ chains to the place of beginning, containing forty acres, more or less, should without any further conveyance from said defendants or either of them be vested, and accordingly is hereby vested, in said plaintiff Penfield in trust for his co-plaintiff and said defendant La Grange Savings Bank. 23

And it is further ordered, adjudged, and decreed that the defendants William Y. and Sarah C. Williams do deliver the possession which they now have of the said land unto said plaintiff Penfield forthwith, and that in the event of their failure so to deliver such possession on or before the 10th day of August, 1878, the said plaintiff do have his writ of assistance against said defendants for such possession, and that the costs of this suit be paid by the defendant William Y. Williams.

And afterwards, to wit, on June 12th, 1878, the defendants filed the following motion for a rehearing, to wit:

Motion for a rehearing.

In the circuit court of the United States for the eastern district of Missouri.

URI S. PENFIELD, COMPLAINANT, *vs.* W. Y. WILLIAMS, DEFENDANTS.

Defendants William Y. Williams and Sarah C. Williams move the court to set aside the finding and decree herein, and for a rehearing of the above entitled cause, for the reasons following:

1. The same are against the evidence.
2. The same are against the law.
3. The attention of the court was not called to material evidence on the part of the defendants.

4. The finding and decree were for the plaintiff, when the same should have been for these defendants.

5. Defendants have discovered new and material evidence since the trial.

THOROUGHMAN AND WARREN,
Sol's for Def'ts W. Y. & S. C. Williams.

234 And afterwards, to wit, on July 16th, 1878, the following further proceedings were had in said cause, to wit:

Extension of time to perfect appeal.

URI S. PENFIELD ET AL., COMPLAINANTS,
vs. } 1002.
SARAH C. WILLIAMS ET AL., DEFENDANTS.

This day come the said parties by their solicitors, and file stipulaton extending time fifteen days from date in which to perfect appeal.

And afterwards, to wit, on August 3rd, 1878, the following further proceedings were had in said cause, to wit:

Appeal bond approved.—Appeal allowed.

URI S. PENFIELD ET AL., COMPLAINANTS,
vs. } 1002.
SARAH C. WILLIAMS ET AL., DEFENDANTS.

This day come the defendants and present to the Hon. Samuel Treat their appeal bond, which is approved and ordered to be filed. And thereupon it is ordered that an appeal be granted as prayed by the said defendants.

Which said bond is in words and figures as follows, to wit:

Appeal bond.

Know all men by these presents that we, William Y. Williams, Sarah C. Williams, as principals, and Charles H. Stevens, John L. Bartlett, and Samuel D. Mattingly, as sureties, are held and firmly bound unto Uri S. Penfield and the First National Bank of Quincy, Illinois, in the full and just sum of twenty-five hundred dollars, to be paid to the said Uri S. Penfield and the First National Bank of Quincy, Illinois, their heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents, sealed with our seals and dated this 9th day of July, in the year of our Lord one thousand eight hundred and seventy-eight. Whereas, lately
235 at the March term, 1878, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Uri S. Penfield et al., plaintiffs, and William Y. Williams et al, judgment was rendered against the said defendants, and the said defendants having obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Uri S. Penfield et al., citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said William Y. Williams and other defendants shall prosecute said appeal and answer all damages and costs if they fail to make good their appeal, then the above obligation to be void, else to remain in full force and virtue.

WILLIAM Y. WILLIAMS. [SEAL.]
SARAH C. WILLIAMS. [SEAL.]
CHAS. H. STEVENS. [SEAL.]
JOHN L. BARTLETT. [SEAL.]
SAMUEL D. MATTINGLY. [SEAL.]

Sealed and delivered in the presence of
ALFRED F. POULTON.
Approved by—

SAMUEL TREAT, *Judge.*

236, 237 AUSTEN QUISENBERRY, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

1. Int. State your name, age, and residence.

Ans. My name is Austin Quisenberry; my age is 63, and residence La Grange, Lewis County, Mo.

2. Int. State how long you have resided in La Grange, Mo.

Ans. About fifteen years.

3. Int. What has been your occupation since you resided in La Grange the past fifteen years?

Ans. The first ten years I was a dealer in merchandise and since that time I also manufactured tobacco.

4. Int. Are you acquainted with W. Y. Williams, one of the defendants in this suit?

Ans. I am.

5. Int. How long have you known him?

Ans. I have known him for fifteen years, ever since I have been here.

6. Int. Have you had any business relations or partnership with Mr. W. Y. Williams in the past 15 years?

238 Ans. I have.

7. Int. State as near as you can the dates of that business relation and partnership with W. Y. Williams, when it commenced and when it ended.

Ans. It commenced in the spring of 1863 and terminated in about two years from that time.

8. Int. Did that partnership end in the spring of 1865 or 1866?

Ans. To the best of my recollection I came here in 1863 and in that spring our partnership commenced, and ended in spring of 1865.

9. Int. Did this partnership end at or about the date Mr. Williams, Wakefield and others formed a copartnership for the purpose of manufacturing plug tobacco?

Ans. Shortly after the termination of my copartnership with Mr. Williams, he, Williams, engaged in the manufacture of tobacco, and Mr. Wakefield was in the house with him and supposed he was a part-

239 ner; don't know that he was.

Int. At the date you and Mr. W. Y. Williams entered into the partnership mentioned, what was the nature of that business?

Ans. It was merchandising.

10. Int. You say this copartnership continued about two years?

Ans. About two years; it may have been a little over.

11. Int. How was this partnership dissolved?

Ans. It was dissolved by mutual consent, by my buying Mr. Williams' interest.

12. Int. Then, I understand you to say, you bought out his interest in the stock of goods and assets due the firm?

Ans. I bought his entire interest in the stock of goods. There were some claims that were not very good, which were to be collected as far as possible and divided between us if collected. There were never very many of them collected.

13. Int. You say you bought out his entire interest in the
240 stock of goods?

(Objected to by defendant's attorney, for the reason that the witness has been interrogated as to the matter inquired about in the last interrogatory.)

Ans. Yes.

14. Int. How did you pay him for this interest in that stock of goods?

Ans. It was between four and five hundred dollars I had to pay on our final settlement.

15. Int. Were you acquainted with other property owned by Mr. W. Y. Williams at that date?

Ans. Only as to the house and grounds he occupied at the time, which I understood to be his. I knew nothing further than that.

16. Int. The house and lot you refer to in your last answer, please describe it as near as you can.

Ans. The house was a brick house, on a very pretty plat of
241 ground; should judge there were several lots from the size of the enclosure. There were fruit trees and shrubbery on it, and it was a very pretty place.

17. Int. Do you know whether that property at that date, the title thereof, was held by Mr. W. Y. Williams or Mr. Jas. L. Peake?

Ans. I don't know whether Mr. Peake had any claim on it or not.

18. Int. This house and lots mentioned above, occupied by W. Y. Williams do you know what the value thereof was in 1863?

Ans. I have no correct idea of value property in this place at that time or now.

I suppose that property may have been worth twenty or twenty-five hundred dollars. It is only my supposition.

Cross-examination by defendant's attorney:

19. Int. In answer to certain interrogatories in your examination-in-chief, you state that you formed a partnership with said William Y. Williams, the object and purpose of which was that of merchan-
242 dising; now please to state what, if anything, did said W. Y. Williams contribute to the assets of said firm. If money, how much; if goods, what were they worth?

Ans. It was goods, and to the best of my recollection it was from thirty to thirty-two hundred dollars' worth.

20. Int. What, if anything, were the profits of said business during the period of time said William Y. Williams and yourself were so engaged in such business? State as near as you can now remember.

Ans. I have no idea what they were; whether one hundred or a thousand dollars. It has been so long ago I have forgotten all about it.

21. Int. Did the profits of said business exceed the losses thereof, or was it otherwise?

Ans. I don't think we lost anything and I don't think we made much

22. Int. Please state whether the said William Y. Williams.

243 was or was not engaged in business other than that pertaining to such partnership, during the same or part of the same period of time.

Ans. He may have been, but I don't know that he was.

23. Int. Was or was not the said William Y. Williams, during the period of time in which he and yourself were engaged in such partnership, also engaged in buying and shipping leaf tobacco, in connection with one William Cleam, of Hannibal, Missouri?

Ans. I don't recollect that he was. He may have been, though, shipping tobacco.

24. Int. Please state whether or not you are acquainted with the general reputation of the said William Y. Williams, as to his solvency or insolvency from the spring of 1863 to the spring of 1870?

Ans. Personally, I was not. When I first came here his reputation for solvency was good, but whether it continued to 1870 or not I
244 cannot tell; it may have been that long or not so long.

25. Int. Please state, if you know, what the general reputation of the said William Y. Williams, as to his solvency or insolvency in the community where he resided, and among men with whom he did business, was in the spring of 1868?

(Objected to by plaintiff's attorney as not having been enquired into in the examination-in-chief, and for the further reason that the same is irrelevant.)

Ans. I cannot say what it was then, for I cannot remember.

Redirect by pl't'ff's att'y:

26. Int. You state in your cross-examination that W. Y. Williams put into the business concern formed by you and him in 1863 three thousand dollars or upwards in goods; now please state, as near as you re-
245 member, how this amount or this sum was drawn out of said firm by Williams.

Ans. Some of it was taken out on the account of home expenses; we had an account there same as a man would have at most any store; then he would draw out of the concern for other purposes and charge himself with it, and I don't know what he did with it.

And further deponent saith not.

AUSTIN QUISENBERRY.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

G. W. CONNELL,
Notary Public.

Milton Million.

Personally appeared Milton Million, of lawful , who being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

1. Int. State your name, age, and place of residence.

Ans. My name is Milton Million; age, 60 years; residence, Lagrange, Lewis County, Missouri.

246 2. Int. How long have you resided in Lewis County?

Ans. Thirty-seven years.

3. Int. Are you acquainted with William Y. Williams, one of the defendants in this suit?

Ans. Yes, sir.

JACOB R. HARRIS, being first duly sworn according to law, deposes and says:

Int'g. 1. State your name, age, occupation, and residence.

Ans. My name is Jacob R. Harris; my age, 51 years past; my occupation, a tobacconist; residence, Palmyra, Mo.

Int'g. 2. How long have you been engaged in the tobacco business?

Ans. I was 6 or 7 years of age.

Int'g. 3. What did your business consist of, whether of buying, manufacturing, and selling?

Since the year 1855 of buying, manufacturing, and selling.

Witness explained by stating there might be some little lapse of time that he was not in it.

Int'g. 4. State whether you were acquainted with Wm. Y. Williams, of La Grange, Mo; and, if so, where and when your acquaintance began.

Ans. 4. I am. Since 1865 and before 1868.

Int'g. 5. State whether you ever had any business relations with
256 him; and, if so, what the business was & where it was.

Ans. 5. I have had partnership relations with him in the manufacture of plug tobacco, at Lagrange, Mo.

Int'g. 6. When was that?

Ans. I believe in or about 1870.

Int. 7. Was the business confined simply to the manufacture of plug tobacco?

Ans. 7. Yes, sir.

Int. 8. State whether it had any reference to the buying and selling as well as the manufacture of plug tobacco.

Ans. It did, for manufacturing purposes.

Int. 9. How long did your partnership relations continue?

Ans. 9. I think it ended within the first year.

Int. 10. Please give us, as near as you can, the date your partnership commenced in '70 with Williams and others.

Ans. 10. My memory is not distinct, but I presume in the early part of the year.

Int. 11. Did it commence as early as month of April?

257 Ans. 11. I think it did, sir.

Int. 12. Did you at any time about the time your partnership commenced with Williams have any conversation or conversations with Mr. Williams, one of the defendants in this suit, in regard to 42 acres of land that he then resided on? If yea, state what Mr. Williams said in that conversation.

(This question is objected to by counsel for defendants Wm. Y. and Sarah C. Williams, for the reason that the matter therein inquired about was immaterial to the issues in this case and hearsay as to the defendant Sarah C. Williams.)

Ans 12. In general conversation the subject had been alluded to. I don't believe I am prepared to give any further answer to that, as the question is presented.)

Int. 13. Did Mr. Williams at that conversation or either of them make any statements to you as to the ownership or in regard to the ownership of the land in question and improvements thereon?

258 (Objected to by counsel for defendant Sarah C. Williams, on the ground that the same called for hearsay evidence or statements of a person other than herself, and for that reason that the same was improper.)

Ans. 13. He did, and I so understood in this conversation that he was the legal owner.

Int. 14. Please give the substance of his statements made, as nearly as you can.

(This question is objected to by counsel for defendant Sarah C. Williams, for the same reasons as to the last above.)

Ans. The substance of that conversation was in effect that it was his property.

(This question was objected to by counsel for defendant Sarah C. Williams, on the ground that the same was from hearsay.)

Int. 15. Did Mr. Williams in that conversation point out and
259 show you the location of the property, and explain its value?

(Counsel for the defendant Sarah C. Williams objects to this question on the ground that the same is leading and calling for hearsay evidence as to her.)

Ans. 15. I think that he did, in answer to my questions.

Int. 16. Where did this conversation take place?

(Object. same as last.)

Ans. At or upon the premises above referred to.

Int. 17. Whereabouts are these premises situated with reference to Lagrange?

Ans. 17. If in the corporation, the western part of the city.

Int. 18. Did this conversation take place between you and Mr. Williams before you formed a partnership with him in 1870?

(Same objection by defendant's counsel as above.)

Ans. 18. I think at or about that time.

260 Int. 19. You say you are a practical tobacconist. Was the business of buying leaf tobacco, manufacturing the same into plug tobacco, selling the same, a hazardous and risky business during the years 1868 & '69?

(This question is objected to by counsel for defendant Sarah C. Williams, on the ground that the same is leading and that the subject matter inquired about in said interrogatory is wholly irrelevant to the issues in this case.)

Ans. 19. I can only say am a practical tobacconist, and in regard to the business for the year above named previous to the passage of the stamp act, it was one of great risk.

Int. 20. Were you in business the years 1868 & '69 manufacturing plug tobacco?

(This question was objected to for the same reasons as last above by the counsel for the defendants.)

261 Ans. 20. I was a purchaser of plug tobacco, and had the supervision of manufacturing at one or more factories in those years.

Witness my hand this 2nd day of April, 1878.

JACOB R. HARRIS.

Subscribed and sworn to before me this 2nd day of April, A. D. 1878.

GEO. McINTYRE,
N. P. A. C., Ills.

263 *Uri S. Penfield.*

URI S. PENFIELD, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Int. 1. State your age and residence.

Ans. My age is 56 years; residence, Quincy, Illinois.

Int. 2. How long have you resided in Quincy?

Ans. 2. About 40 years, with the exception of 2 years.

Int. 3. What has been your occupation for the last 15 years?

Ans. 3. Cashier of Quincy Savings Bank, and the First National Bank of Quincy, since 1864.

Int. 4. You are one of the party plaintiffs in this suit against W. Y Williams and others, I believe?

Ans. 4. I am.

Int. 5. Are you acquainted with W. Y. Williams and Sarah C. Williams, his wife, two of the defendants in this suit?

Ans. 5. I am acquainted with W. Y. Williams and have seen his wife at his house.

264 Int. 6. The indebtedness of W. Y. Williams & others to the 1st National Bank of Quincy, Ill's, on which judgments were rendered in the circuit court of Lewis County, Mo., in 1874 and '5, can you state about what time that indebtedness began?

(This question is objected to by solicitors for the defendant Sarah C. Williams, on the ground that the same is leading and calls for matters about which this witness has not testified, and assumes that this witness has testified to facts about which he has not been interrogated, and as to which he has not made answer. This question was waived by counsel for plaintiffs.)

Int. 7. If W. Y. Williams, one of defendants in this suit, is at this date indebted to the First National Bank of Quincy, Ill's?

(Objected to by counsel for defendant Sarah C. Williams, on the ground that the matter therein inquired about is immaterial to the issues in this case.)

Ans. 7. He is.

265 Int. 8. In what sum, as near as you can come at it?

(Same objection as last above by counsel for defendant.)

Ans. 8. I am unable to state the precise amount.

(This answer is objected to by counsel for the said Sarah C. Williams, for the reason that the same is wholly immaterial to the issues in this case.)

Int. 9. State whether or not the judgments rendered in the Lewis Co. circuit court against W. Y. Williams & others in favor of the 1st National Bank of Quincy are still due and unpaid.

(This was objected to by counsel for the said S. C. Williams, 1st, for the reason that the same is leading, & 2nd because said question assumes that the defendant has testified to a fact that he has not.)

Ans. 9. It is yet due and unpaid.

(Said answer also objected to for same reason as above.)

Int. 10. Please state, if you remember, how many judgments there were rendered in the circuit court of Lewis Co., Mo., in favor of

266 the 1st National Bank of Quincy, Ill's, and against W. Y. Williams & others, defendants.

(This question was objected by counsel for the said S. C. Williams on the following grounds: 1st, that the same is leading; 2nd, for the reason that by said interrogatory the witness is inquired of about matters that he has not testified to, & 3rd, for the reason that the record of any judgment or judgments inquired about in said interrogatory, if any such there are, are the first and best evidence of the same.)

Ans. 10. I think there were four.

Int'g. 11. State, now, when this indebtedness began at your bank, the 1st National Bank of Quincy, Illinois.

(Same objection as last above.)

Ans. 11. April 14th, 1870, I think.

Int. 12. Was this indebtedness loans or discounts on paper made by the party? Please state.

(This question is objected to by counsel for defendant S. C. Williams, on the ground that the same is leading and indefinite and not
267 pertinent to any issue in this case.)

Ans. 12. It was paper of the firm discounted.

(This answer is objected to by counsel for defendant Sarah C. Williams, on the ground that the same is indefinite so far as effecting any of her interests in this case are concerned.)

Int. 13. How much money did W. Y. Williams & Co. receive on that first loan or discount?

(This question is objected by counsel of defendant Sarah C. Williams, on the ground that the matters therein inquired about are immaterial to the issues.)

Ans. 13. I cannot state precisely: the note was for $5,772·81 *dollars*. They received that amount less 10 % interest for 60 or 90 days. Cannot give the time, as I have not the books now before me.

Int. 14. Did these defendants borrow any other money of the 1st National Bank during the year 1870, except the note stated, to wit,
268 W. Y. Williams, Geo. H. Simpson, R. N. Blackwood & J. R. Harris?

(This question is objected to by counsel for S. C. Williams, on the ground that the matter inquired about is immaterial in the issues in this case.)

Ans. 14. They did.

Int. 15. How much?

Ans. 15. I think something like $15,000.00.

Int. 16. State if these notes were renewed from time to time up to some date as near as you can remember.

Ans. 16. They were renewed from time to time up to about June and July, 1871.

Int. 17. Has this indebtedness of W. Y. Williams & Co. ever been paid by them or any other person to the 1st National Bank of Quincy, Ills.?

(Question objected to by counsel for S. C. Williams, on the ground that the matter therein inquired about is immaterial to the issues in this case.)

269 Ans. 17. It has not.

Cross-examination on behalf of SARAH C. WILLIAMS:

X int. 1. Are the defendants Wm. Y. Williams & Sarah C. Williams either indebted to you personally?

X ans. 1. No, sir; they are not.

X 2. Is not the only indebtedness about which you have testified or referred to in your several answers to the foregoing interrogatories in chief an indebtedness owing to the 1st National Bank of Quincy, Ills., by the defendant' Wm. Y. Williams & Geo. H. Simpson, R. N. Blackwood & J. R. Harris?

X ans. 2. Yes, sir.

X int. 3. And as I understand you, to your answer to int'g. No. 11, in chief, such indebtedness first existed or was created April 14th, 1870. Am I correct in this?

X ans. 3. Yes, sir.

X int'g. 4. Is the said Wm. Y. Williams to your best knowledge
270 and belief in any wise indebted to said 1st National Bank other than by reason of the indebtedness referred to by you in your said answer to question No. 11 in chief; or such as he after the time named in said answer he became indebted to you?

X ans. 4. He was indebted to the 1st National Bank with others to the amount of judgments obtained in Lewis Co. circuit court.

X int. 5. Was any of the indebtedness on the judgments referred to by you in your deposition in this case created or exist' prior to April 14, 1870?

X ans. 5. I think not.

URI S. PENFIELD.

Subscribed and sworn to before me this the 2nd day of April, A. D 1878.

GEO. McINTYRE,
N. P. A. C., Ills.

271 STATE OF MISSOURI,
County of Lewis, ss:

In the recorder's office.

Among other instruments of writing on record in said office is the following, in words and figures as follows, to wit:

Know all men by these presents that we, Wickliffe Johnson, William J. Buckley, and Sarah J. Buckley, wife of the said William J. Buckley, of the county of Lewis, in the State of Missouri, have this day, for and in consideration of the sum of one hundred and thirty ($130) dollars to the said Wickliffe Johnson, William J. Buckley, in hand paid by Sarah M. Blackwood, of the county of Lewis, in the State of Missouri, granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Sarah M. Blackwood, the following described tract or parcel of land situated in the county of Lewis and State of Missouri, and known and described as follows, to wit, lot six (6), in block six (6), in Wright and Shropshire's addition to the city of La
272 Grange, all of the right, title, and interest in said lot which the said Wickliffe Johnson and William J. Buckley derived from the estate of George W. Y. Buckley, dec'd; also, the undivided interest of Alexander D. Buckley in said lot which he derived from the estate of George W. Y. Buckley, deceased; to have and to hold the presents hereby conveyed, with all the rights and privileges and appurt'ances thereto belonging or in any wise appertaining unto the said Sarah M. Blackwood, her heirs and assigns, forever; we, the said Wickliffe Johnson and William J. Buckley, hereby covenanting to and with the said Sarah M. Blackwood, her heirs and assigns, for herself, her heirs, executors, and administrators, to warrant and defend the title to the premises hereby conveyed against the claims of every person
273 whatsoever. In witness whereof we have hereto subscribed our names and affixed our seals this the twentieth day of March, A. D. 1867.

WICKLIFFE JOHNSON. [SEAL.]
WM. J. BUCKLEY. [SEAL.]
SARAH JANE BUCKLEY. [SEAL.]

U. S. tam 5 cts. W. J. W. J. B. 20, 1867.]

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that, on this twentieth day of March, A. D. 1867, Wickliffe Johnson, William J. Buckley, and Sarah J. Buckley, who are personally known to the undersigned, a justice of the peace within and for said county, to be the persons whose names are subscribed to the foregoing deed as parties thereto, this day appeared before me and acknowledge that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein conveyed; and the said Sarah J. B. Buckley, being by me made acquainted with the con-
274 tents of said deed, acknowledged on an examination apart from her said husband that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or under influence of her said husband.

Given under my hand this 20th day of March, A. D. 1867.

W. G. EWING, *Justice.*

Filed for record, March 16th, 1867.

THOS. B. JEFFRIES,
Recorder,
By P. C. AGER, *D. R.*

STATE OF MISSOURI,
County of Lewis, ss:

I, Chas. R. Magee, recorder of deeds in and for said county, hereby certify that the above is a true copy of the original deed from William J. Buckley to Sarah M. Blackwood, as the same appears of record in my office.

Witness my hand as recorder, and the seal of my office.
275 Done at office in Monticello, this 26th day of September, 1877.

CHAS. R. MAGEE, *Clerk,*
Per , *Deputy.*

Deposition of witnesses produced, sworn, and examined on the 29th day of April, in the year of our Lord A. D. 1878, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at my office, in Saint Louis, Missouri, and No. 414 Olive street, at room 2nd floor of the Insurance Exchange building, before me, Thos. N. Lipscumb, a notary public in and for said city, in a certain cause now pending in the United States circuit court for the eastern district of Missouri, between N. S. Penfield and the First National Bank of Quincy, Illinois, plaintiffs, vs. William Y. Williams, Sarah C. Williams, et al., defendants, on the part of plaintiffs.

J. V. Alverson.

J. B. ALVERSON, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

276 I am 58 years of age; I reside in the city of La Grange, Lewis County, Missouri; have resided there since the fall of 1862; I have been practicing law, and am still practicing.

1. Q. What relation, if any, do you hold to the La Grange Savings Bank, and how long have you held such relation?

A. I am a stockholder in that nat. bank. I have been president of it ever since it was organized; it was organized in July, 1866.

2. Q. Where does the defendant William Y. Williams live?

A. He lives in La Grange, Lewis County, Missouri.

3. Q. How long has he lived there?

A. He has lived there since the fall of 1862.

4. Q. When did your acquaintance with Mr. Williams begin?

A. In Nov., 1862.

5. Q. State whether your acquaintance and relations with him have been intimate or not in that time.

277 A. Very much so.

6. Q. What was his condition as to property in the year 1865?

(This question is objected to by counsel for Sarah C. Williams, on the ground that the same is immaterial to the issues in this case as to her.)

A. I don't think he owned a great deal of property in 1865.

7. Q. What was his reputed condition as to property in the spring of 1866?

(Same objection as last above.)

A. Mr. Williams did not own a great deal of property in the spring of 1866.

8. Q. Can you state what property he then had and held; if so, do so?

A. He owned a house and two or three lots; he also owned an interest in a stock of goods, him and Quisenberry in partnership.

9. Q. State whether you know of any other property he owned at that time.

(Same objection as last above.)

278 A. I do not.

10. Q. About what time was the partnership between him and Mr. Quisenbury dissolved?

(Objected to by counsel for defendant Sarah C. Williams on the ground that the same is immaterial and calls for matters not material to the issues in this case as to her.)

A. I am not right certain about the date, but believe it was in the spring of 1866.

11. Q. What was the business of the partnership between him and Quisenbury?

(Same objection as last above.)

A. General merchandising, I think, sir.

12. Q. What business did Mr. Williams engage in after his separation from Quisenbury?

(Same objection as last above.)

A. The manufactory of plug tobacco.

13. Q. How long after the separation from Mr. Quisenbury before he engaged in that business?

(Same objection as last above.)

279 A. Right away after the separation—perhaps before, for ought I know.

14. Q. From the spring of 1866 to August of 1870 what business was Mr. Williams engaged in?

(Same objection as last above.)

A. He was manufacturing plug tobacco.

15. Q. State whether, by what you have said, you mean that he was engaged in the buying, manufacturing, and selling plug tobacco.

(Same objection as last above.)

A. I mean buying leaf tobacco, manufacturing the same into what is known as plug tobacco, and selling the same.

16. Q. State whether he was, during that period, engaged in any other business than that you have named.

(Same objection as last above.)

A. Not that I know of.

17. Q. Please state your means of knowledge.

(Same objection as last above.)

A. I lived neighbor to him. Our relations were always friendly; I frequently had conversations with him in regard to his business
280 and affairs. He done considerable business through the bank when I was present.

18. Q. State what length of time, from and after the spring of 1866, those relations between you and Mr. Williams existed?

(Same objection as last above.)

A. Up to 1870 or 1871, after Mr. Williams moved on to the premises now in question; after that I did not see him so often as I did when he was on the street in business.

19. Q. What was the reputed condition of Mr. Williams as a man of property in the year 1866, '67, '68, and '69?

(Same objection as last above.)

A. I don't know that I am prepared to answer that question; the man was trading largely on borrowed capital. It would be very hard for me to give a definite answer.

20. Q. Are you acquainted with his wife?

A. I am very well acquainted with Mrs. Williams.

21. Q. Do you know where she was in September, 1866.

281 A. She was living with her husband.

22. Q. Where was she residing in and during the year 1867?

A. She was residing with her husband in La Grange; some time in 1868 her and her husband moved on this land now in controversy, and have resided there ever since.

23. Q. Are you acquainted with 42-acre tract of land and improvements involved in this case?

A. I am, and have known the lands for the past fifteen years.

24. Q. Who made said improvements?

A. W. Y. Williams.

25. Q. Briefly state of what they consist, their style, &c.

A. A neat brick dwelling-house, a barn, other out-houses; the land is cleared and fenced; it is set out in fruit trees, the better portion of it, wells ornamental shrubbury. It is well fitted up, one of the neatest places in the country.

26. Q. State whether the forty-two acres is within the corporate limits of the city of La Grange.

A. It is.

282 27. Q. What would be the reasonable cost of said improvements when made.

A. I would say they would cost from eight to ten thousand dollars.

28. Q. In what years were they made.

A. In 1868, '69, '70, I reckon.

29. Q. Now, sir, what was the reasonable value of said property so improved in 1869?

A. I suppose it was worth $13,000 or $14,000.

30. Q. Are you acquainted with the judgement and debts set forth in plfts' amended bill as due from William Y. Williams and others to the La Grange Savings Bank?

A. I am.

31. Q. Please state the origin and consideration of the one for $1,635.25 as principal?

A. This note was made on the first day of April, 1871. In this note

was merged a note from Geo. H. Simpson, W. Y. Williams, R. N. Blackwood, for $800 or $1,000. That ballance of a note was given some time in 1866 or '67. The ballance to make it up to $1,635.25 was money loaned them up to that date. I wish to qualify this answer by stating
283 that to the best of my recollection these were the makers of the said note so merged, to wit, Simpson, Williams, and Blackwood. I have had a conversation with Mr. Simpson in regard to this note so merged, and he is of the opinion that Mr. Old and somebody else were on the note with him. The note so merged was made payable to the La Grange Savings Bank.

32. Q. When were you first advised that the 42-acre tract and improvements were in the name of Mrs. Williams?

(Same objection as last above.)

A. About the date, or just before, suit was brought by First National Bank of Quincy, Illinois. I reckon it was in 1873, sir.

33. Q. Had you any conversation with Mr. Williams as to the property being in the name of his wife?

(This question was objected to by counsel for def't Sarah C. Williams, on the grounds that it called for hearsay evidence as to her, and that the matters inquired about were immaterial to the issues of this case.)

A. Yes.

284 34. Q. State about when and where this conversation occurred.

(The counsel for the def't, Sarah C. Williams made the same objections to this question as to the last above.)

A. In La Grange, in front of the La Grange Savings Bank. It must have been in 1876, a few days after the suit was instituted by Penfield against Mr. Williams and wife for the recovery of premises in suit.

35. Q. State what Mr. Williams then and there said with reference to that property.

(This question was objected to by counsel for Sarah C. Williams, for the same reasons as question No. 33 above was objected to.)

A. I don't believe it would be possible for me to state all he did say; there was a great deal said between us. He said the land was put out of Penfield's reach. He couldn't reach it. He said that he had had it conveyed to Mrs. Williams before the indebtedness to Penfield was contracted; that he had been advised by counsel that a man had a
285 right to deed, or cause his property to be conveyed, to his wife or other person when he was clear of debt. The above is the substance of the conversation.

Cross-examination conducted by Mr. WHEAT, attorney for defendants William Y. and Sarah C. Williams:

1. Q. You are a practising lawyer and residing in La Grange, in this State, are you not?

A. I am.

2. Q. Are you not one of the attorneys for the plaintiffs in this suit?

A. I assisted in bringing the original suit brought in Lewis County that was taken by change of venue to Marion County. I assisted there, and also in obtaining an order to get it certified from there to the United States circuit court, where the same is now pending, and I am still one of the plaintiffs' attorneys.

3. Q. Did you not, as the attorney for the First National Bank
286 of Quincy mentioned in the bill of complaint in this case, obtain the judgment for the said bank therein referred to in its favor?

A. Yes, sir; I did.

4. Q. In your answer to question No. 31 in chief you refer to a judg-

ment in favor of the La Grange Savings Bank. Is that the same judgment in favor of said bank which is referred to in the bill of complaint in this case?

A. Yes; the same judgment.

5. Q. That judgment was rendered, or I would rather say was based, upon a promissory note for $1,635.25, made by Geo. H. Simpson, R. N. Blackwood, and the defendant William Y. Williams, and given in 1871, as I understand you. Am I correct in this?

A. Yes.

6. Q. In your answer to question No. 31 in chief you refer to a note to the La Grange Savings Bank, which you say was for from eight
287 to ten hundred dollars, which you say was merged in this note for $1,635.25. Was the said William Y. Williams a party to that note so merged?

A. To the best of my recollection, the note so merged was made by Geo. H. Simpson, William Y. Williams, and R. N. Blackwood.

7. Q. May you not be mistaken as to Mr. Williams being a party to that note, and may William E. Olds have been a party to it? I mean one of the signers of the same instead of Mr. Williams.

A. Yes; I might be mistaken, but I have spoken from my best recollection.

8. Q. Was not Geo. H. Simpson the principal in the note that was so merged?

A. We never have any principals or securities in that bank. They are all joint makers. Simpson's name first appeared in the note.

9. Q. What was that note given for?

A. For borrowed money.

288 Q. 10. By whom was the same borrowed?

A. By the makers.

11. Q. For whose use—for whose benefit I mean?

A. I can't tell whose use it was for.

12. Q. Was not the said Geo. H. Simpson entirely solvent during the years of 1867 and 1868?

A. No, he was not.

Re-examined by counsel for plaintiffs:

1. Q. Do you know R. N. Blackwood?

A. Yes, sir.

2. Q. Where does he live?

A. At La Grange.

3. Q. What sort of house is he living in?

A. He is living in a very excellent house, a frame building, with two or three lots.

4. Q. In what year was the house built?

A. I reckon the house was built in 1870 or '71.

5. Q. What were the building lots and improvements worth
289 when completed in 1870 or '71?

(This question is objected to by counsel for defendant Sarah C. Williams, on the ground that the matters inquired into are not pertinent to this case, and also are not a proper subject of re-examination.)

A. I would state that at a reasonable estimate the house when completed was worth 45,000 or $5,000.

6. Q. Who built it?

A. R. N. Blackwood had it built.

7. Q. Who, since the property was built, claims to be the owner?

A. Mr. Blackwood and Mrs. Blackwood have lived on it ever since, and are living there yet. The proper title to it is in Mrs. Blackwood.

(This answer was objected to by counsel for Sarah C. Williams on the ground that the witness therein stated facts not permissable to be proven by parol as to title, no proper foundation having laid for such proof.)

290 8. Q. State whether this is the R. N. Blackwood who was part of W. Y. Williams in 1869 and '70 in the tobacco business.

(Objected to.)

A. It is the same Blackwood.

9. Q. State what the financial condition of Blackwood was in 1868, '69, and '70.

A. Mr. Blackwood, at the time of the engaging in the tobacco business with Mr. Williams, had but very little means, if any.

10. Q. What visible property had he?

A. I don't think he had any. I believe Mrs. Blackwood owned a little house that they afterwards sold for 400 or 450 dollars?

11. Q. State whether you have ever heard Mr. Blackwood say anything about the ownership of that property.

A. I don't now remember whether I have.

12. Q. State whether you have ever heard him disclaim ownership of the property.

A. I have not.

13. Q. How do you then get at the fact that the property is in
291 the name of his wife?

A. I had occasion to examine the records of the Lewis County circuit court, deed records, at the request of Mr. Penfield. I found the record title in Mrs. Blackwood.

(A paper is here shown the witness purporting to be a true copy of the original deed from William J. Buckley to Sarah M. Blackwood, which said deed is marked Exhibit A and is hereto annexed.

14. Q. State whether said deed has reference to the property you have spoken of as in the name of Mrs. Blackwood, and whether Sarah M. Blackwood is the wife of R. N. Blackwood.

A. Sarah M. Blackwood is the wife of R. N. Blackwood, and the lot here described is one of the lots on which they reside and on which said improvements stand. My opinion is that they bought one or two other lots.

292 15. Q. Are you acquainted with the present financial condition of R. N. Blackwood, whether solvent or insolvent?

A. I don't know of any other property he owns, except that property referred to above.

16. Q. What is his reputed condition as to solvency?

A. He is paying no old debts. When he wants any articles from the stores he goes and buys them and pays for them.

17. Q. What was his reputed condition for solvency in 1868, '69, and '70?

A. It is very hard to tell, when men are trading largely on borrowed capital. He had no visible property that I knew of. I understood, however, that when Wm. E. Mann's interest in that tobacco factory was sold in the bankrupt court that Blackwood bid it off. Whether he bid it off in his own name or the name of some one else I can't say, or whether he ever payed for it.

293 Not being able to complete the taking of said deposition by

reason of the lateness of the hour, it being now six o'clock, I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours.

THOMAS W. LIPSCOMB,
Notary Public.

Pursuant to adjournment, as above stated, on the 30 day of April, A. D. 1878, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at my office, No. 414 Olive, R. 1, 2nd floor, St. Louis, Mo., I continued the taking of said depositions as follows, viz:

Judge J. B. Alverson, in continuation of his deposition commenced yesterday, on his oath further says:

18. Q. State whether if Blackwood had owned or held property to any extent in 1868, '69, & '70 you could or might have known the fact.

294 A. I think my relations were such with the firm and with Blackwood that if he had owned any property other than that hereinbefore stated I should have certainly known it.

19. Q. What did he do for a support before going into the tobacco business with Williams?

A. He was laboring by the day; sometimes laying brick, or any other job that he might come across.

20. Q. If you know, state whether he was engaged in any regular business.

A. He was engaged in none.

21. Q. How long have you been acquainted with Geo. H. Simpson?

A. Some twenty years; lived near him for the last 13 years in La Grange, Missouri.

22. Q. What have been your relations with him; intimate or not?

A. Very intimate.

23. Q. In what sort of house is he living?

A. He lives in a very elegant house. When he came out of the tobacco business he had some money. He lost that in a pork speculation here in the city of Saint Louis.

295 24. Q. When did he come out of the tobacco business?

A. In the fall of 1870.

25. Q. When did he lose his money in Saint Louis?

A. If my memory is correct it was in 1871 or 1872.

26. Q. What was his condition in the year 1870 as to solvency or insolvency?

A. It was doubtful.

27. Q. State if you please whether or not Simpson was a party to the debts owing by the firms of Williams & Co., J. Harris & Co., at the close of that tobacco business, and whether he did not jointly with Williams, Harris, and Blackwood, owe said debt due to the First National Bank of Quincy, Illinois, and to the La Grange Savings Bank of La Grange, Missouri.

A. Mr. Simpson's name was on all the paper due both banks, but the reason his name does not appear in the judgments is, he got a discharge in bankruptcy beforet he judgments were obtained. When

296 the case was called for trial he plead a discharge in bankruptcy, the case was dismissed as to him.

28. Q. State whether the judgments you refer to are those named and in the amended bill of pl'ffs.

A. Yes; they are the same judgments.

29. Q. State whether or not Williams, or Williams & Co., had an account with your bank, the La Grange Savings Bank, running from September, 1868, to August, 1870, and whether during such time the said Williams, or Williams & Co., was or were not owing your said bank debts in a greater or less sum or sums from said September, 1868, to August, 1870, and whether he, Williams, or they, Williams & Co., are not still largely indebted to your said bank.

A. These parties had an account there from September, 1868, to August, 1870. They were not clear of debt to the bank during that time; they are still largely indebted to the La Grange Savings Bank on the judgments mentioned in the bill.

297 (The counsel for the defendant Sarah C. Williams objected to each and every of the foregoing interrogatories propounded to the said J. B. Alverseu, in his examination-in-chief-on the grounds that the matters in each of the same inquired about were not pertinent to the issues in this case; that the same were not proper subject matters of examination-in-chief; that they called for he'resay evidence; that they called for matters not provable by parol testimony, without having laid a sufficient foundation therefor; and also objected to each and every of the answers on such re-examination on the grounds that the matters in the same stated was improper matter to be proven by parol, was foreign to the issues in this case, that the same were conjectural and mere hearsay or supposition; all of which objections were made at the time said questions were respectively asked and answered, and by agreement of parties is now here noted.)

298 J. B. ALVERSON.

Subscribed and sworn to before this 30th day of April, A. D. 1878.

My commission expired May 8th, 1881.

THOMAS W. LIPSCOMB,
Notary Public.

Alverson deposition continued on next page.

299 The witness, J. B. Alverson, by consent of the parties to this suit, at the request of the plaintiffs' counsel, again appears before me, on this 30th day of April, A. D. 1878, and further testifies as follows:

1. Q. In your answer to interrogatory 29 in-chief, you have said that William Y. Williams or William Y. Williams & Co. had an account with the La Grange Savings Bank from September, 1868, to August, 1870, and that they were not clear of debt to the bank during that time. Now please state whether or not the said parties, including William Y. Williams, had a like account with your said bank from June or July, 1867, continuing to August, 1870, and whether they were indebted, in a greater or less amount, to the said La Grange Savings Bank from that time to August, 1870.

A. They had a like account there in July and August, 1867, and a continuous account from that time up to 1870, as stated in answer
300 to interrogatory 29. They were indebted to the said bank, in a greater or less amount, from said period above stated up to August, 1870.

2. Q. Had you any acquaintance or knowledge of the tobacco business in which Mr. Williams was engaged in 1867, '68, '69?

A. I was about the tobacco factory *factory* frequently; had considerable business with the concern, in the way of collections.

3. Q. Please state whether the said business in said years was hazardous and risky or not.

A. Well, from what I saw, my observations around there, I should say it was. I frequently saw government agents there overhauling their books. I mean to be understood by this that it was previous to the passage by Congress of the United States of what is known as a stamp act for stamping tobacco.

Re-recross-examination:

301 1. Q. Did the said William Y. Williams owe the said La Grange Savings Bank, after a proper adjustment of accounts between him and them, anything between the first day of January, 1868, up to the present time?

A. W. Y. Williams & Co. did. I can't state positively whether William Y. Williams, on his own individual account, did or not.

2. Q. Did the said William Y. Williams & Co. owe the said La Grange Savings Bank anything? I mean after balancing the account between the first day of December, 1867, and the first day of January, 1870.

A. They did. The *re* account was not settled until March 20, 1871.

3. Q. For how much was the said Williams liable to said bank, after a proper adjustment of accounts, at the time Mr. Skinner sold and conveyed the property in question to the defendant Sarah C. Williams?

A. It would be impossible for me to give anything like an
302 exact statement of the amo'nt that he was then liable for. Three months previous to that time, I would state that they discounted and sold to the bank what is commonly known as tobacco paper, $21,000 worth. This paper was from 60 to 120 days before it matured. What amount of that paper had not been collected at that date, the 11th day of February, 1868, I can't say.

4. Q. Oh, well, you don't mean, do you, that William Y. Williams is indebted to the bank upon anything except the judgments in its favor mentioned in the bill of complaint in this case, do you?

A. No, sir; he is not indebted to the bank at this day on anything except these judgments.

J. B. ALVERSON.

Subscribed and sworn to before me this 30th day of April, A. D. 1878. My commission expires May 8th, 1881.

THOMAS W. LIPSCOMB,
Notary Public.

303 The foregoing deposition of J. B. Alverson was, by consent and agreement of parties, taken at the office of H. L. and Y. W. Lipscomb, attorneys at law, Saint Louis.

DRYDEN & DRYDEN,
For Plaintiffs.
WHEAT & BONNEY,
Attorneys for Wm. Y. and Sarah C. Williams.

I, THOMAS W. LIPSCOMB, a notary public within and for the city of Saint Louis and State of Missouri, do certify that, in pursuance of the consent and appearance of the parties to this suit, came before me, at my office, No. 414 Olive, or southeast corner of 5th and Olive, room 1, 2d floor, in the city of Saint Louis, in the State of Missouri, J. B. Alverson, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing, and subscribed

304 by him in my presence on the days, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

My commission expires May the 8th, 1881.

Given under my hand and official seal, at Saint Louis, in the State of Missouri, this 30th day of April, A. D. 1878.

THOMAS W. LIPSCOMB,
Notary Public.

305 *Deposition.*

In the circuit court of the United States, eastern district of Missouri.

URI S. PENFIELD, PLAINTIFF,
vs.
S. C. WILLIAMS ET ALS., DEFENDANTS. } No. 1002.

Deposition of witnesses produced, sworn, and examined on the tenth day of December, in the year of our Lord 1877, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at the office of George W. Connell, a notary public in Lagrange, in the county of Lewis and the State of Missouri, before me, George W. Connell, a notary public within & for county and State aforesaid, in a certain cause now pending in the circuit court of the United States for the eastern district of Missouri, between Uri S. Penfield, plaintiff, and S. C. Williams et als., defendants; on the part of the defendants present J. B. Alverson, esq., on behalf of the plaintiff, and Oscar P. Bonney, esq., on behalf of the defendant.

Wm. Y. Williams.

WILLIAM Y. WILLIAMS, of lawful age, being produced, sworn, and examined on the part of the defence, deposeth and saith:

Q. What is your name?

306 Ans. William Y. Williams.

Q. Where do you reside, and how long have you there lived?

Ans. In La Grange, Lewis Co., Missouri; have lived there twenty years.

Q. Are you the William Y. Williams mentioned as one of the defendants in the above-mentioned suit?

Ans. Yes.

Q. Is not the defendant Sarah C. Williams your wife?

Ans. She is.

Q. When were you married to her?

Ans. In October, 1848.

Q. Have you and she lived together as husband and wife since such marriage, at all times?

Ans. We have.

Q. Has she ever borne you any children? If yea, state their names and ages.

Ans. Yes; H. W. Williams, aged 27; Robt. H. Williams, age 25; Mary E. Williams, 23; George T., age 20; and Edna M., age 4 years.

Q. Are you a householder? If yea, how long?

Ans. I suppose I am; have been some 25 years.

307 Q. Have you been a householder and the head of a family, say, for the past 20 years, at all times?

Ans. I have.

Q. Who constitutes your family at present?

Ans. Myself, my wife, my son George, & my daughter Edna.

Q. Have the two children named by you in your last answer lived with you since their respective births, at all times?

Ans. They have.

Q. Is there any other person a member of your family; if so, who?

Ans. We have a girl named Miss Belle Hutchinson living with us.

Q. What is her age, and how long has she been a member of your family?

Ans. Suppose her age to be near 20 years; she has been living with us some nine years.

Q. In what capacity has she so lived with you—as a mere servant or as an adopted child?

Ans. More in the capacity of a servant; she is not an adopted child.

308 Q. Are you now engaged in business; if yea, in what and where?

Ans. My time is engaged in cultivating my piece of ground, fruit trees, &c.—is all the employment I have.

Q. What ground or land do you refer to in your last answer? Please describe the same particularly.

Ans. The place on which I now live described as follows, to wit: Commencing at the southeast corner of the southeast quarter of the section twenty-five, township sixty-one, range six west, at letter D, on county surveyor's plat No. 124, running north 31 $\frac{60}{100}$ chains to a stone letter C; thence east 17 $\frac{39}{100}$ chains to a stone letter M; thence south to a stone letter N, 16 $\frac{90}{100}$ chains; thence west to a stone 9 $\frac{04}{100}$ chains; thence south to a stone 14 $\frac{20}{100}$ chains; thence west to the place of commencement 8 $\frac{16}{100}$ chains, containing forty-two acres, more or less.

309 Q. Please look at the deed now shown you and state whether or not you ever saw the same before; if yea, when for the first time, and please attach a copy thereof, together with the copy of the certificate of acknowledgement thereto, to this deposition, and mark the same Exhibit B.

Ans. I have seen this deed before, about the 13th of Dec., 1871, a copy of which, together with a copy of the acknowledgment to the same, is hereto attached and marked Exhibit B.

Q. Please look at the deed now shown you and state whether or not you ever saw the same before; if yea, please attach a copy thereof, together with a copy of the certificate of the acknowledgement to the same, to this deposition and mark the same Exhibit A, and state when you first saw the same?

Ans. I have. I first saw it the 11th day of Feb., 1868, a copy of which, together with a copy of the certificate of acknowledgment to the same, is hereto attached and marked Exhibit A.

Q. Are the granters in said two deeds the same person?

Ans. They are.

310 Q. Is not the Sarah C. Williams named in the said two deeds the same person, and one of the defendants in this suit.

Ans. She is.

Q. How came the first deed, of which Exhibit A is a copy, to be executed? State all the facts and circumstances within your knowledge which led to the execution of the same.

Ans. It was executed in consideration of a certain sum of money and other property paid to James H. Skinner.

Q. What was the consideration for said conveyances?

Ans. It was eighteen hundred dollars in money and my homestead, valued at three thousand dollars.

Q. Of what did said homestead consist?

A. It consisted of three town lots, with brick house and other improvements thereon.

Q. Did you and your wife occupy such house as your homestead at the time of said purchase from said Skinner?

A. We did.

311 Q. How long had you so occupied the same?

A. Some six or seven years in all.

Q. In whom was the title vested of such homestead?

A. In James Peak.

Q. To whom did the same belong?

A. It belonged to me, W. Y. Williams. After owning it several years I sold it to James Peak. He owned it about a year. I then purchased it back from him, put considerable improvements upon the same, and when I traded with Skinner, Peak deeded the property directly to Skinner, at my request.

Q. Whose money was the eighteen hundred dollars paid said Skinner, as stated by you?

A. The money paid was mine.

Q. Then, as I understand you the money, and property given Skinner in payment for the land conveyed by him to your wife belonged to you; am I correct in this?

A. You are.

Q. Why, what was the occasion for the execution of the deed of which Exhibit B is a copy?

312 A. I learned in the fall of 1871 that the numbers of the land in the first deed were not correct, and proceeded at once to have the deed corrected by taking a deed of correction.

Q. I understand you, then, as saying, in effect, that the second deed was made for the purpose of correcting a misdescription of the lands described in the first deed. In other words, to convey to your wife the lands really purchased. Is this the way you wish to be understood?

(Objected to by p't'ff's att'y as being leading, and furnishing answer for the witness.)

A. It is.

Q. Was the land so conveyed to your wife by the second deed improved or not at the time of the purchase of the same by you?

A. They were not.

Q. Were the same timbered or prairie land?

A. Timbered land.

Q. Has the same been improved since such purchase; if so, by whom?

313 A. It was, by me.

Q. What is the nature of such improvements, and state the cost of the same, as near as you can?

A. The improvements consisted in clearing and fencing the land, building dwelling-house and necessary outbuildings, setting out fruit trees of various kinds, said improvements costing me over seven thousand dollars, or near that.

Q. When did you commence making such improvements?

A. Early in 1868.

Q. Did you ever realize anything from the timber that was on the

land at the time of your said purchase? If yea, state the nett amount, as near as you can.

A. Yes; I realized considerable from the sale of wood. Can't say just what amount. I had cut between five and six hundred cords of wood, a large portion of which I sold at $4 per cord. I should judge it would nett me some $1,000.00 to twelve hundred dollars.

314 Q. Between what periods of time did you do the clearing, fencing, and erect the dwelling-house and outhouses on said land, about which you have testified.

A. It was done principally in the year 1868.

Q. When did you plant out the trees or orchard of which you have spoken?

A. Part in 1869 and part in 1871. That is my recollection. In the spring of each year stated.

Q. State, as nearly as you can, the expense of planting such orchard.

A. The cost of trees and planting out same cost me near three hundred dollars.

Q. Why did you make the purchase of said land? What was your object in doing so?

A. My object in purchasing and improving said lands was for a permanent home for my family.

Q. When did you take possession of the same?

A. I moved with my family into the property in Dec., 1868.

315 Q. When did you first obtain possession of the land?

A. I considered that I had possession of the land when I received the first deed, Feb. 11, 1868.

Q. When did you commence improving the same?

A. Think I commenced cutting wood before I got the first deed, having made part payment on the land, say, the latter part of 1867 or beginning of 1868.

Q. Have you, your wife, and family resided upon said lands at all times since Dec., 1868?

A. We have.

Q. Do you now own any real estate?

A. I have an undivided interest in forty-eight acres of unimproved land belonging to my father's estate.

Q. Do you own any other real estate at this time?

A. I do not.

Q. Do you now own any personal property; if yea, what does it consist of?

A. I do; consisting of some cattle, two milch cows, one heifer,

316 one horse and buggy, spring wagon, harness and garden implements, and household furniture.

Q. Do you own any personal property other than that given in your last answer; if yea, of what does it consist?

A. Nothing now that I am aware of.

Q. Have you now any monies; if yea, to what amount?

A. Yes; to the amount of a few dollars, some pocket change only.

Q. Are there any notes, accounts, or bills receivable now owing you, or in which you are interested, which are collectable?

A. I have a considerable amount of notes on which I have tried to make collections and failed, and consider them worthless at present.

Q. What is your age?

A. Fifty-one years.

Q. Have you ever been engaged in business?

A. I have.

Q. Of more than one kind?

A. Yes, sir.

317 Q. State the different kinds you have been engaged in, and the periods of time you was engaged in the same respectively.

A. First I was engaged in farming from 1847 to 1856 in Lewis County, Missouri. I was engaged in general merchandise business from March, 1857, to the spring of 1866, and from the spring of 1866 to the spring or summer of 1870 I was engaged in the manufacture of tobacco since 1870; my time was principally devoted to work on the place on which I now live.

Q. Where did you conduct the merchandise business about which you have spoken, and also that of manufacturing tobacco?

A. In La Grange, Missouri.

Q. Had you a partner or partners in the merchandise business about which you have spoken; if yea, who?

A. Yes; my first partnership was with Thomas Richardson and George H. Simpson, and next with Samuel H. Williams, and next with

318 Austin Quisenberry.

Q. Did you have any partner or partners in your manufacture of tobacco; if yea, who?

A. I did; from the spring of 1866 to the latter part of the same year I had as partners Wilson Wakefield, Robert W. Blackwood, and Samuel T. Moon, the firm name being W. Y. Williams and Co. From December, 1866, to the fall of 1867 I had as partner William B. Mann; the firm being styled W. Y. Williams & Co. From early in the year of 1868, I forget the exact time, to the year 1869, Robert N. Blackwood was my partner; same style firm, W. Y. Williams & Co. During the year 1869, I mean the working season, Robert N. Blackwood and George H. Simpson were my partners; firm style same, W. Y. Williams & Co. From the spring of 1870 until August of the same year Jacob R. Harris, Robert N. Blackwood, and George H. Simpson, and myself were partners, under the firm name of J. R. Harris & Co.

Q. When was said last firm dissolved; state as near as you can?

319 A. My recollection is that this last firm was dissolved in August, 1870, by mutual consent.

Q. Did you then retire from the business of manufacturing tobacco?

A. I did.

Q. Have you ever been engaged in any business since that time other than that of winding up your old affairs and the improvement and working upon the lands conveyed to your wife by said Jas. H. Skinner, as already stated by you?

(Objected to by pl'tff's att'y as leading and irrelevant.)

A. No; I have not.

Q. What property, if any, had you at the time you made said purchase of land from the said James H. Skinner and had the same conveyed to your wife, as stated by you in this deposition, other than your homestead and the eighteen hundred dollars with which you say you paid for said lands? Please answer this question carefully and

320 fully, in your own way, to the best of your knowledge and remembrance.

A. I owned at that time one-half undivided interest in the tobacco factory known as the "Globe Tobacco Works," located in La Grange, Lewis Co., Missouri, including all machinery, fixtures, and appertenances, stock on hand, and working capital; also the undivided eighth part of

48 acres, heretofore referred to; I believe I also owned at that time a cow and a horse, and my household furniture.

Q. What, in your opinion, was a fair cash valuation of your interest in the fixtures, appertenances, and stock on hand, including said tobacco factory building, at the time of said purchase from said Skinner?

A. I do not now remember how much stock we had on hand, but the building, machinery, and fixtures all cost about fourteen thou-
321 sand dollars, which would make my interest in the same cost about seven thousand dollars, but I suppose that the cash value at the time referred to would hardly be worth so much.

Q. What, in your opinion, was your interest in said factory, machinery and fixtures, and working stock spoken of by you worth at the time of said purchase from the said James H. Skinner?

(Objected to by pl't'ffs because it has not been shown by this witness that he knew what the property was worth at that time.)

A. I should think at that time that it would be worth from ten to twelve thousand dollars. I mean my interest.

Not being able to complete the taking of said depositions, by reason that the examination of witnesses is not concluded, I adjourn the further taking of the same till to-morrow, then to be continued at the same place and within the same hours mentioned in the annexed stipulation.

322 G. W. CONNELL,
Notary Public.

Pursuant to adjournment, as above stated, on the 11th day of December, 1877, between the hours of 8 in the forenoon and 6 in the afternoon, at the office of George W. Connell, as mentioned in annexed notice, I continued the taking of said disposition as follows, to wit:

William Y. Williams, in continuation of his deposition commenced yesterday, on his oath further says:

Q. What do you mean by "working stock," as referred to by you in this deposition?

A. I mean the stock on hand and in transit and stock in hands of agents.

Q. What was you worth, I mean what property did you have, at the time of your said purchase from said Skinner?

(Objected to by pl't'ff's att'y because the question has been asked before and answered.)

A. I owned one undivided one-half interest in the "Globe Tobacco Works," consisting of the real estate on which the building stands,
323 sixty feet front on the river, east by one hundred and eight feet, I believe west to an alley, including all the machinery and fixtures and stock in said "Globe Tobacco Works," or belonging to the business of the same. I also owned one undivided one-eighth interest of 48 acres, heretofore referred to in this deposition also, before I made the transfer to Skinner of the property in which I lived, hereinbefore mentioned, the same being my former homestead.

Q. The reason of my asking the last question is that since our adjournment last evening there has been placed in my hands what purports to be a copy of a bill filed in the United States circuit court for the eastern district of Missouri, wherein the said Uri S. Penfield, the plaintiff in this suit, mentioned in the caption of this deposition, is a com-

plainant, together with the First National Bank of Quincy, Illi-
324 nois, as a cocomplainant, and yourself and your said wife and the La Grange Savings Bank are made defendants, which has been filed in said last-named court, and the same having been done, as I understand, by leave of said court in the suit or proceedings mentioned in said caption, are you not, and is your said wife not, as you understand it, parties defendant in said bill?

(Objected to by pl'tiff's att'y, because the interrogatory is irrelevant and redundant, and not supported by the law of evidence, and because it partakes more of the nature of a special pleading than it does of an interrogatory.)

A. Yes.

Not being able to complete the taking of said depositions by reason that the examination of witnesses is not concluded, and furthermore by the mutual consent and request of plaintiff and defendant, I adjourn the further taking of the same till the day after to-morrow, 13th
325 December, 1877, there to be continued at the same place and between the same hours mentioned in the annexed stipulation.

Pursuant to adjournment, as above stated on the 13th day of December, 1877, between the hours of 8 in the forenoon and six in the afternoon, at the office of G. W. Connell, as mentioned in annexed stipulation, I continued the taking of said depositions as follows:

W. Y. Williams, in continuation of his deposition commenced on the 10th instant, on his oath further says:

Q. Were you indebted at the time of said conveyance to your wife—I mean February, 1868,; if yea, in what amount? State as nearly as you can.

A. I was indebted some; cannot say just how much, but think the amount would not exceed two thousand dollars, except the last payment on the "tobacco factory," which was either paid at the time or some time after.

326 Q. State as nearly as you can the total amount that you was owing at the time you purchased the twelve acres of land of James H. Skinner referred to by you in this deposition.

A. As near as I can recollect now, it would not exceed two thousand dollars, aside from the last payment on tobacco factory; my part of said payment on the factory, I think my recollection is, two thousand dollars; I think it was a joint note.

Q. Have you paid the indebtedness referred to by you in your last answer?

A. I have.

Q. When did you pay the same? State as near as you can now remember.

A. I paid balance due on the tobacco factory some time the early part of the year 1868, I think; the other amounts that I was indebted I paid from time to time during the years 1869 and probably some in 1870.

327 Q. From what source or sources, if more than one, did you derive the means with which you paid off the debt on the factory and the other indebtedness mentioned by you in this deposition?

A. I derived the means from collections of money due me, and profits in business.

Q. Due from what source?

A. From accounts, and notes, &c.

Q. You have in this deposition spoken of a tobacco factory located in La Grange, Lewis Co., Missouri, and stated, as I now remember, that you were the owner of an undivided moiety of the same, together with an undivided moiety of the fixtures and machinery used therein for the purpose of manufacturing tobacco. Have you ever sold and disposed of the same?

A. I have.

Q. When?

A. In August, 1870, if I recollect aright.

Q. To whom?

328 A. To Jacob R. Harris.

Q. How, in what manner, and for what consideration?

A. My partner, Robert N. Blackford, and myself traded all the property known as the Globe Tobacco Works to Jacob R. Harris, for real estate situated in Quincy, Illinois. There was three different pieces of real estate traded for in Quincy.

Q. Was the Quincy property mentioned by you transferred to you and the said Robert N. Blackwood?

A. It was.

Q. When—state the time as near as you can now remember?

A. About August, 1870.

Q. What was the basis or source of indebtedness upon which the judgments mentioned in the petition filed in this case was recovered?

329 A. As I understand it, the debts of or due the First National Bank of La Grange, or La Grange Savings Bank, were contracted by other parties, and I became security or endorser for the same. The debts due the First National Bank of Quincy were contracted for monies furnished J. R. Harris & Co., and renewals of paper on the payment of acceptances which were not paid when due.

Q. Did any of the indebtedness exist upon which the judgments were recovered, which are mentioned in the petition filed in this case, at the time James H. Skinner and wife conveyed to your wife the forty-two acres of land, about which you have testified in this deposition.

A. Not that I know of.

Q. Was you one of the principals in all of the indebtedness upon which said judgments were rendered.

A. No, I considered myself as endorser.

Q. Did you have said land conveyed to your wife for the pur-

330 pose or with the object of hindering or delaying any creditor of yours existing at the time of said conveyance in February, 1868?

(Objected to by pl'tiff's att'y on the grounds that the question is leading.)

A. I did not.

Q. Said conveyance was made to your wife at your request, was it not?

A. It was.

Q. Was such conveyance made to your wife at such request on your part in anticipation on your part of any future indebtedness or liability?

(Pl'tiff's att'y objects on the grounds that the question is leading.)

A. It was not.

Q. The commissioner taking this deposition has just reread the same to you so far as the same has progressed. Have you any corrections or suggestions to make concerning any of your answers? If so, please make the same now in such way as to you may seem right.

331 A. I wish to correct the names of partners in the tobacco business in the year 1866. I desire to leave out the name of Robert

N. Blackwood, which appears in the foregoing deposition as partner in connection with myself, Wilson Wakefield, and Samuel S. Moore, as he was not a partner at that time or with those parties.

Q. What, in your opinion, was you worth, I mean what do you think the value of your property was, on February 11, 1868, over & above your indebtedness at that time?

A. According to my best remembrance, something over 15,000 dollars.

Cross-examined by plaintiff's attorney:

Q. In your examination-in-chief, you have stated that as part of the consideration for the deed from Skinner & wife to your wife you paid Skinner, cash, 1,800 dollars. At what time with reference to the deed did you pay that 1,800 dollars?

A. I paid, I think, nine hundred dollars in September, 1867, and nine hundred dollars some time in December of the same year.

Q. Am I to understand that you paid the whole of the eighteen hundred dollars before the date of the deed of the 11th February, 1868?

A. Yes, sir; I had paid it all.

Q. How long before the date of the deed of 11th February, 1868, did you make the last payment?

A. The last payment of the eighteen hundred dollars for the pur-
332 chase of the twelve acres of land I paid about the 20th December, 1867.

Q. From what source did you get the nine hundred dollars which you say you paid in December, 1867?

A. My recollection is that I drew it out of the firm of W. Y. Williams & Co.

Q. Who composed the firm of W. Y. Williams & Co. from which you drew this nine hundred dollars?

A. W. Y. Williams & William B. Mann.

Q. Did that firm keep books?

A. Yes, sir.

Q. Have you the custody of those books?

A. No, sir.

Q. Who has the custody of them?

A. I do not know.

Q. In whose custody were they when you last saw them?

A. I think they were left in the factory for some time; I couldn't tell whose custody they were in.

Q. Has the old factory in which the books were left changed hands since you last saw the books there?

A. I think there has been one or two changes in the firm managing the factory.

Q. Were you not a member of each one of the firms into which
333 the changes were made of which you have spoken?

A. I was a member of two of the firms succeeding; there was one or two changes since; that is my recollection.

Q. Were the books of which you have spoken in the factory while you were connected with the last firm of which you have spoken?

A. I do not now remember; they were there for a considerable time after the change was made.

Q. Did these books ever go into the hands of Mr. Mann after the dissolution of your partnership?

A. They did not.

Q. Can you say that the books are not now in the factory and accessible to you?

A. I cannot say; I have not seen them for a long time; had no use for them.

Q. Did you charge yourself on the books of the concern with the nine hundred dollars paid by you in December, 1867, and drawn by you from the firm?

334 A. I suppose I did, as I aimed to keep my books correct and straight.

Q. From what source did you derive the first nine hundred dollars which you paid to Mr. Skinner?

A. I drew it from the firm of W. Y. Williams & Co., composed of W. Y. Williams and W. B. Mann.

Q. Did you charge yourself on the books of the concern with that sum likewise?

A. I suppose I did; I think I did.

Q. Has there ever been any settlement of the copartnership account of the firm of Williams and Mann?

A. As near as could be made.

Q. What do you mean by that answer?

A. I mean that the settlement of the firm's business was as fully settled as we were able to make it; that William B. Mann's interest was seized by government authority, and sold.

335 Q. Who bought William B. Mann's interest at the government sale?

A. Robert N. Blackwood.

Q. Was it a public or private sale?

A. Public sale.

Q. What did Mr. Blackwood pay for Mann's interest?

A. I do not now remember, but think it was some twenty-five hundred or three thousand dollars.

Q. What were the things that were sold in which Mann had an interest?

A. The real estate, machinery and fixtures, and stock on hand.

Q. What was the amount or extent of Mann's share in the copartnership property and its effects?

A. We were equal partners.

Q. What was the date of the government sale of Mann's property?

A. I do not recollect the date, but believe it was in January, 1868.

Q. You never pretended to have a settlement of accounts with Mr. Mann, did you, after the dissolution of the partnership?

336 A. Not formally, as the business was about settled at that date—accounts collected. We overlooked the books in our business, and knew how the matter stood. Mr. Mann, to meet his obligations, drew out of the concern all that was due him.

Q. Was that before or after the dissolution of the partnership?

A. As I understand it, the dissolution was a forced one, caused by the seizure of Mann's interest at that time. He had drawn out his available interest before the sale of his interest in the factory and fixtures, as before mentioned.

Q. Which had drawn most, you or he?

A. He. Mann drew more than his share.

Q. How much more than his share?

A. I do not now remember.

Q. Can you approximate it?

A. I cannot, not having the figures before me. He was very hard pressed at the time.

337 Q. Did his excess amount to thousands of dollars, or less?

A. Probably less; a few hundreds.

Q. Then, after the government sale of his interest, he never gave any further attention to the concern or its affairs?

A. No further than claiming that the property was sacrificed, and that from time to time he wanted money. He thought that in justice he ought to have more than he had received.

Q. Did you reply to any of his demands by paying him more money?

A. I did not.

Q. Where is Mann?

A. I learned a few weeks ago that he was killed in a drunken spree in the city of Louisville, Ky.

Q. How long since you have seen him hereabouts?

A. I have not seen him here for some seven or eight years, to the best of my recollection.

Q. Isn't it your understanding that he has been out of the State ever since he was sold out by the government?

338 A. I believe he has.

Q. Did the firm owe any debts at the time of its dissolution?

A. But very few, if any; there was a last payment on the real estate, I think, was not paid at that time.

Q. What was the amount of that payment that was not then paid?

A. My recollection of it, it was a joint note of myself and W. B. Mann for two thousand dollars.

Q. Can you recall no other debts that the firm then owed?

A. I cannot now.

Q. Had not the firm been buying tobacco on credit?

A. The firm had bought tobacco during the working season, but never later than November, and as tobacco was a cash article, it was paid for at the time or in a very few days after its purchase.

Q. Did the firm not from time to time borrow money to carry on its business?

339 A. It did at times borrow money when we were carrying a considerable amount of stock.

Q. How much capital did you put into the concern of Williams and Mann?

A. I do not now remember; at first the amount was not large, but we both put in money from time to time as we could, which was properly credited to each one.

Q. Were the amounts put in by you equal?

A. We aimed to put in equal amounts. The early part of the year I think perhaps Mr. Mann put in more than myself.

Q. How much did you put in in the beginning yourself?

A. I do not know.

Q. Can you approximate it?

A. I cannot, as a part of my interest was machinery, and do not remember what it was valued at. Mr. Mann also put in a considerable amount of machinery, which we had on hand.

340 Q. How much capital did you put in during the whole period of your partnership with Mann?

A. I cannot remember, but I know it was several thousand dollars.

Q. If I understand you aright you paid in money from time to time during the progress of the copartnership; please state from what source you derived the money that you thus paid in.

A. That would be hard to tell just from what sources. I had money on hand; and having a great many notes and accounts due me, and

when I would make collections or get money I would put it into my business.

Q. Can you not approximate the amount of these payments into the concern during its progress?

A. I cannot now, as I paid in from time to time all the money that I could into the firm.

Q. Now can you give me the name of any one from whom you received the sums thus paid in?

341 A. I do not now remember.

Q. Did you draw out of the concern any money except the two sums of nine hundred dollars each which you paid to Skinner?

A. I suppose I did small amounts from time to time, as also did William B. Mann.

Q. You suppose so; you are not certain of it?

A. I feel very certain that I did draw small amounts, as necessity required, for a living.

Q. Were the amounts that you and Mann drew from the concern about equal?

A. During the whole term of partnership I think he drew more than myself.

Q. How much more?

A. I could not say precisely; several hundred dollars though.

Q. I understand from your answer in your examination-in-chief that there was an interval between the partnership of yourself and Mann and the formation of the partnership between yourself and Blackwood; was there such interval?

342 A. There was.

Q. What was the length of it?

A. A few weeks.

Q. What were you doing during that time; what business were you engaged in?

A. Not much of anything; only keeping things together and making preparations for spring work and looking after some wood-chopping that I had going on.

Q. What capital did you put into the copartnership of Williams and Blackwood?

A. I do not remember; I owned one-half of the building and machinery, and I suppose four or five thousand dollars in money.

Q. Did you put that into the concern of Williams and Blackwood—your half interest in the building and machinery and four or five thousand dollars in money.

A. The factory and machinery was undivided one-half interest, and the money I put in to operate in manufacturing.

343 Q. Do I understand you to say that you put in your undivided half interest in the factory and machinery and four or five thousand dollars in money as your share of the capital of that copartnership?

A. I did not intend it in that light. Mr. Blackwood could not furnish as much money as myself; I therefore paid in more into the concern than he did.

Q. Did you put the buildings and machinery in as capital stock?

A. I don't know that there was anything said about the buildings and machinery as capital stock, but Mr. Blackwood's interest in building and machinery amounted to the same as my own interest.

Q. Did the concern open a set of books?

A. It did.

Q. Was there a stock account entered in those books?

A. Of nothing but the working stock or capital used in the business.

344 Q. Of what did the working stock or capital of which you have just spoken consist?

A. Of money paid in the concern by each of us, and what stock or material that was on hand from the old firm of Williams and Mann; do not remember how much stock there was.

Q. Was it at all considerable in amount, that is, of the material of which you have just spoken?

A. It was not.

Q. How much of the money paid in as capital in the first instance, and entered in the books of the concern, was paid in by Mr. Blackwood?

(This question was objected to by counsel for defendants Wm. Y. and Sarah C. Williams, for the reason that the same or the matters inquired about were not a proper subject for cross-examination.)

A. I do not now remember, but not near as much as that paid in by myself.

Q. Were you equal partners, or in what proportion did you
345 share the profits and bear the losses?

A. We were not equal partners; there was an understanding between us that each should share the profits, if any, or loss, in proportion to the amount of money or capital furnished by each respectively.

Q. Was that proportion determined by the amount paid by the respective partners at the time of the formation of the copartnership, or at the time the copartnership commenced business?

A. I think it was.

Q. Was the understanding in respect to the losses and profits reduced to writing between you and Mr. Blackwood?

A. It was not.

Q. Where are the books of accounts of the copartnership of Williams and Blackwood?

A. I cannot tell.

Q. Who kept those books; who was the bookkeeper?

A. I kept them.

Q. In the stock account in the books of Williams and Black-
346 wood how much are you credited with as for cash capital paid in at the time the concern commenced business?

A. My recollection is that I did not pay in at commencement of business all that I paid into the concern; as the work progressed some length of time I probably had in some five thousand dollars, perhaps more, I don't recollect, in cash.

Q. I didn't ask you what you paid in as the work progressed, but asked you how much you were credited with in the stock account for cash paid in at the time the concern commenced business?

A. I do not know what amount I was credited with in commencing business, but as the money was needed or as soon as needed in the business I put in near five thousand dollars, to the best of my recollection.

Q. Can you approximate the amount you were credited with as capital stock paid into the concern at the time of commencement of business?

347 A. I do not now remember, and have no means of knowing, but know that it was all satisfactory at the time.

Q. Are you sure at that time you were credited on the books for anything for cash paid in as capital?

A. I am, as that was my manner of doing business.

Q. Do you know whether your credits in the beginning were more or less than Blackwood's.

A. My credits were more than Blackwood's.

Q. Can you state whether your credits for cash capital paid in at the time was as much as one thousand dollars?

A. I think it was more than that by the time we commenced work.

Q. How much more?

A. Cannot now say.

Q. Did you keep together until you commenced business all of the contributions of both partners to the capital?

A. I think we did. All that was credited on the books.

348 Q. Who was the cashier or custodian of the cash of Williams and Blackwood?

A. I received all monies coming into the concern; I was cashier.

Q. How long after the first payment to the capital stock before the concern (of Williams and Blackwood) commenced business?

A. Do not know, but think it was not long.

Q. What do you mean by "not long"?

A. I call a few weeks "not long." We commenced work as soon as the weather would permit in the spring.

Q. You mean to say, then, that this money paid in as cash capital was held by you for at least a few weeks before the concern had occasion to use it?

A. I do not say all the capital paid into the concern was held by me for a few weeks, but all that had come into my hands as cashier was kept by me until it was needed in payment for stock or supplies; but just how long it was in my care I cannot tell.

349 Q. You cannot tell, then, either how long the cash capital paid in remained in your hands, nor how much?

(This question is objected to by counsel for defendants William Y. and Sarah C. Williams for the reason that the matter inquired about is not a proper subject matter for cross-examination, and for the further reason that counsel in propounding such question assumes in the same that the witness has testified to facts not mentioned by the witness in his deposition.)

A. I cannot tell definitely, it being so long since.

Q. Can you tell where the money about which we have just been speaking was kept by you?

A. I cannot.

Q. Were you in the habit of keeping large sums of money, of, say, five hundred or one thousand dollars, at that time?

A. We sometimes had money in bank, and sometimes we did
350 not have it in bank; often carried it on the person; we commonly kept bank account.

Q. In what bank did you keep your accounts?

A. We done most of our business with the "La Grange Savings Bank." I believe it was then I also done some business with the Quincy banks.

Q. The "La Grange Savings Bank," was the only bank in La Grange with which you kept an account, was it not?

A. I think it was.

Q. What banks in Quincy did you have an account with in 1868 or 1869?

A. I don't remember whether I had accounts opened with Quincy banks in those years. We had paper discounted there sometimes.

Q. Whom do you mean by the pronoun "we," as used in the last answer?

A. Our firm, myself and Blackwood.

Q. In what name was the account of Williams and Blackwood kept in the La Grange Savings Bank?

351 A. W. Y. Williams & Co. I think it was. It ought have been.

Q. Did the next preceding firm of yourself and Mann keep an account in the La Grange Savings Bank; and, if so, in what name?

A. We did, in the name of W. Y. Williams & Co.

Q. Was there any money to the credit of W. Y. Williams & Co. (composed of Williams and Mann) in the La Grange Savings Bank at the time of the dissolution of the last-named firm?

A. I do not remember.

Q. Your first copartnership in the tobacco business was composed of Wakefield, Moore, and yourself, was it not?

A. Yes, sir; in manufacturing tobacco.

Q. Did not that concern deal in the buying, manufacturing, and selling of tobacco?

A. It did; in buying leaf, manufacturing, and selling the same.

Q. Wasn't that the character of the business of the several to-

352 bacco firms of which you have spoken?

A. It was.

Q. Didn't each of the several firms from time to time borrow money to carry on its business?

A. To a small extent, not very much; we sometimes had acceptances of other parties discounted to aid in running the business. If dealing in acceptances is considering borrowing money, we did considerable business that way.

Q. When was the partnership of which Wakefield was a partner formed, and when did it end?

A. It was formed in the spring of 1866 and dissolved or changed hands in December, 1866, I believe.

Q. What do you mean by changed hands?

A. We dissolved by mutual consent the further working of the manufacturing business, and a new firm was organized.

Q. Did Wakefield carry off more than his share of the property of the concern?

A. He did not.

353 Q. He didn't overdraw his account?

A. No, sir.

Q. Did the other member of the concern lose anything by Wakefield?

A. They did: but not ove'drawing his account.

Q. How did they lose by him?

A. The stock on hand, some time after the dissolution, was divided, each member to dispose of some as best they could. Wakefield and Moore sold part of their stock and absconded, at least Wakefield absconded, and left myself or our securities or bondsmen to pay the government tax on the tobacco.

Not being able to complete the taking of said deposition, by reason that the evidence of witnesses cannot be completed, I adjourn the further taking of the same till to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed stipulation.

G. W. CONNELL,
Notary Public.

354 Pursuant to adjournment as above stated, on the 14th day of December, 1877, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at the office of G. W. Connell, as stated in the stipulations annexed, I continued the taking of said depositions as follows, to wit:

W. Y. Williams, in continuation of his deposition commenced on the 10th instant, on his oath further says:

Q. You say Wakefield absconded and left you and your securities on your bond liable to the government for a certain sum of revenue then due on manufactured tobacco, how much or in what sum?

(This question objected to by counsel for defendants William Y. and Sarah C. Williams, on the ground that the matter inquired about was not a proper subject-matter of cross-examination, and for the further reason that the matter inquired about, that the matter is wholly immaterial to the issues in this case.)

A. I do not remember the exact amount, but was something
355 more than two thousand dollars.

Q. Was it as much as three thousand dollars?

A. Cannot now say.

Q. I understand from your former statements that you were book-keeper and cashier of this firm during its existence?

A. Of what firm?

Q. I mean the firm composed of W. Y. Williams, Wilson Wakefield, and S. T. Moore.

A. I was.

Q. Have you the books of that firm in your possession or under your control?

A. I don't think I have.

Q. When did you last see those books, Mr. Williams, and in whose custody at the time you saw them last?

A. I do not now remember when I saw them last; have not seen them for several years. They were perhaps in my custody when I last saw them, as they were under my control, and as I considered them of no benefit to me, I was not careful as to what became of them.

356 Q. Then you do not know what has become of said books?

A. Do not now know, but know they were in the office of the succeeding firms for a long time after the dissolution of the firm.

Q. At the time this copartnership was formed did you have a stock-book, and enter therein the cash paid in by each partner to the capital stock of said company?

A. We had no regular stock-book, but had books in which all the moneys paid in the concern were entered.

Q. State what amount of cash was paid in by you as a partner of said firm at the time the business was commenced.

A. I do not remember what amount I put in at the commencement of the business.

Q. Was it as much as five hundred dollars?

A. I think it must have been, for when we had gotten fully to
357 work I had a great deal more than that; our capital stock, as nearly as I can recollect, and which was paid in, was near ten thousand dollars.

Q. But you can't recollect definitely the sum paid in by you?

A. I cannot, but paid in my part of the stock.

Q. Your partnership preceding the copartnership you have just testified of was with Austin Quisenberry, was it not?

A. It was.

Q. When did that copartnership commence, how long did it exist, and at what date did it end?

A. I think it commenced in the spring of 1864, and continued until the early part of the year 1866.

Q. How was the copartnership settled or wound up between yourself and A. Quisenberry?

A. I sold my interest to A. Quisenberry & retired from the firm.

Q. How much money did you receive from A. Quisenberry on a/c of said sale of your said interest in said stock?

A. I do now remember.

Q. Was it as much as four hundred dollars?

358 A. I think it was considerable more than that.

Q. How much more?

A. I have no means of now knowing, but received payment in full of the amount due me.

Q. Was the amount you received as much as five hundred dollars?

A. My recollection is that it was considerable over that amount.

Q. How much over five hundred dollars, Mr. Williams, as near as you can recollect now?

A. I cannot say.

Q. Then you are positive that you received more than five hundred dollars?

A. I am satisfied that I did from the fact that I put in largely over that amount into the concern, and that I know that we did not lose any money.

Q. I am not asking you now about the settlement of your a/c or a/cs with Quisenberry, but how much money you received on that sale and settlement of Quisenberry in full payment for your interest as aforesaid.

A. I do not now remember, and have no means at my command to know.

Q. You are sure you received in cash as much as five hundred dollars?

359 A. I think I did, but will not be positive. I know that I put into the concern largely over that amount, and have no recollection of drawing out of the firm any more than was necessary in living.

Q. At that date what other property did you own, of what kind, & of what value?

A. My recollection is that I owned a house & 3 lots in Lagrange, one undivided eighth interest of forty-eight acres in Lewis Co., Mo., a cow, household furniture, besides a number of notes and a/cs, of what value I do not now remember.

Q. The house & 3 lots you refer to is the homestead referred to in this deposition heretofore?

A. Yes.

Q. The notes & a/cs, are they the same that you have said in a former answer were worthless & could not be collected?

A. Some of them are & some are not.

Q. What is your undivided one-eighth interest in the 48 acres of land referred to above worth in cash?

A. I cannot tell, but suppose it would probably be worth one hundred dollars.

Q. What kind or quality of land is this 48 acres?

A. It is good, unimproved prairie land.

Q. You say that in the year 1868, some time in the latter part of the summer of that year, you commenced improving by building a dwelling-

house upon the 42 acres of land deeded to your wife, Sarah
360 C. Williams. About what month did you commence said buildings?

A. I think in the latter part of May or first of June I commenced the foundations.

Q. State, if you please, the size of the house.

A. The main front is 34 feet square, two stories high, with an ell 34 feet by 26 feet or thereabouts, & two stories high.

Q. Is there a basement of stone masonry under the building?

A. There is a cellar walled with stone under the ell part of the building.

Q. Is the foundation under the building laid with stone; if so, of what depth?

A. The foundation is built all of stone; that under the front building is some four or five feet in depth, & that under the ell six & a half or seven feet, as near as I can judge.

Q. Of what material is the walls of that building?

A. The main walls are brick.

Q. Is that building finely finished inside, well plastered and painted?

A. Cannot say that it is finely finished, but good and substantial; the plastering and painting I consider very well done.

Q. How many rooms are there in that building?

A. There are ten rooms, including pantry & one small bed-room, besides the cellar.

Q. Is there a hall through that house?

A. There is in the front or main building.

Q. What is the height of the walls from floor to floor?

361 A. I think from eleven to twelve feet; don't know exact distance.

Q. What ornaments on the outside of that building are there?

A. I don't know what you term ornaments; there is a verandah in front and cornice to that building.

Q. What is the size of that verandah?

A. It extends across the front of the building or nearly so, and is some six or seven feet wide and about the height of the first story of main building.

Q. Are the walls of that house and verandah painted?

A. The verandah only is painted and that part of the wall representing a part of the cornice.

Q. Tell us now as near as you can about the date this building was entirely finished as it now appears.

A. My recollection is that it was fully completed about August, 1869.

Q. How much money did that building cost to finish it complete as it now stands?

A. I don't now know what the building cost separate from
362 other improvements, but somewhere from five to six thousand dollars.

Q. Did it cost as much as six thousand dollars?

A. I think it would approximate near that.

Q. You have a barn built by you on said premises; state the size of the same, and of what kind of material it was built.

A. It is a frame barn twenty-four feet square, with stone foundation, about sixteen feet high; that is the barn as first built; the lumber in said barn is pine; the roof is shingle and tin, a small square of tin on top; the outside walls are painted.

Q. Have you added any additions to that barn since it was built?

A. I have. I added a shed addition on north side this fall; the addition is nine feet wide and extending the length of the main barn; this was built of lumber, of same description as main building, shingle roof.

Q. Is said addition or shed inclosed?

363 A. It is, and painted.

Q. What year was the main barn built?

A. In 1868.

Q. How much did the main building cost?

A. It cost about four hundred dollars.

Q. I understand you to say that you built the addition this season. What did that cost?

A. I think it will cost me between sixty and seventy dollars when I get it all paid for.

Q. Have you any other houses on that piece of land built by you; if so, state how many?

A. I have a house used as a wash-house and wood-house, and a house built for a meat or smoke house.

Q. State the size of the wash-house and wood-house, as you term it; the quality of material built of.

A. The building is twenty-four feet in length by sixteen feet in width, twelve or fourteen feet in hight*h*, painted on outside, and built of

364 pine lumber, shingle roof, with some tin on top.

Q. Now state if you please the cost of this building in cash.

A. It cost about three hundred dollars.

Q. State the size and character of the smoke-house, what kind of material built of, as near as you can.

A. The building is twelve feet square, built of pine lumber, painted on outside, covered with shingles, and cost about one hundred dollars.

Q. How many wells have you on those premises; of what kind, size, depth, and how made?

A. Have two; one near my dwelling, some twenty feet deep, from four to six feet in diameter, and walled with stone, not connected; one at corner of barn about thirteen feet deep, from four to six feet in diameter, and walled with stone.

Q. What did the first well referred to cost to wall it?

A. Do not now remember; would think somewhere near forty dollars.

365 Q. What was the cost of the second well, as near as you can approximate?

A. Can't remember, but suppose from twenty-five to thirty dollars.

Q. You have a very beautiful yard in front of your house, fenced with a fine fence, the yard beautifully ornamented with shrubbery, evergreens and other ornamental shrubbery, walks made from the gate to the door. What did this cost to make it, Mr. Williams?

A. Cannot now tell what all cost of the things enumerated, but the cost in money was not large, as I gathered a great portion of the evergreens and trees from the woods, and done all the labor in setting and cultivating myself. There are a few evergreens and a small lot of shrubbery which I bought, at a cost that I think would not exceed thirty to forty dollars. The fence is a plain square picket fence, nailed to railing. Do not remember what it cost.

366 Q. Please state what it would be worth to make the yard fence and set out the ornamental shrubbery, as stated by you, including the actual cost in cash.

A. I cannot tell.

Q. Can't you approximate something near it, with your knowledge of business?

A. I cannot now.

Q. Would it be worth to make that yard fence, make those walks, set out the variety of shrubbery you have there, and scenery, as much as two hundred dollars?

A. I should think that it would.

Q. The entire forty-two acres is enclosed with a fence, is it not?

A. It is.

Q. What kind of a fence?

A. Principally plank fence.

Q. What kind of plank is it enclosed with?

A. Pine.

Q. What was the cost of putting this plank fence around that forty-two acres of land?

A. I do not remember. There is a good portion of it is partnership or division fence.

367 Q. Tell what your portion of the fence cost to put it there.

A. I cannot tell.

Q. Can't you approximate the cost?

A. I cannot now tell.

Q. How many rods of plank fence did you put around said premises?

A. I do not know, as I never made an estimate of rods.

Q. Can't you approximate near the number of rods of fence put there by you and also the cost per rod?

A. I cannot now.

Q. I will ask you, Mr. Williams, right squarely the question. Did it cost you as much as five hundred dollars to enclose the place with a fence?

A. I do not think it did.

Q. How much less then did it cost you than that?

A. My reasons for answering the foregoing questions about the cost of fencing as I have are that when I purchased or traded for the thirty acres of land it was fenced, or nearly so, but afterwards completed.

368 Q. Please state how much money it cost you to finish making the said fence.

A. I have but little idea now, but probably somewhere from one to two hundred dollars.

Q. How many acres of that land did you set out in fruit trees, peach trees and apple trees, and other fruit trees?

A. About ten acres.

Q. What was the cash cost of buying trees and setting out enough to cover ten acres?

A. I do not remember precisely, but think it was between two hundred and fifty and three hundred dollars.

Q. State now how your house and yard are situated on the land purchased from Skinner; on what part of said tract, as near as you can.

A. On the southeast corner.

Q. State if there is a public road running in front of your yard; &, if so, what road.

A. There is a public road known as the Lagrange & Monticello road.

Q. State if this tract of land, forty-two acres & improvements, all lies inside of the corporate limits of the city of Lagrange, Lewis County, Mo.

A. It does now, but did not at the time of purchase.

369 Q. You say in your deposition in several places that the im-

provements on a large part thereof made by you on this land were so made in 1868 & 1869; state from what source or sources you received or derived the money to pay for said improvements.

A. Well, I derived the money from business transactions and profits in business.

Q. What kind of business was it from which you received this money?

A. I had prosecuted business of several kinds a few years prior to this, and I think that some money was made from each of them.

Q. Please tell us what kind of business that was.

A. First, general merchandising, buying and selling leaf tobacco; also in manufacturing tobacco.

Q. You say a part of this money was received by you on profits in business; what business do you allude to?

A. Business as stated in my last answer.

Q. Did you or did you not draw this money out of the partnership fund then existing between you and R. N. Blackwood, under the
370 name and style of W. Y. Williams & Co.?

A. I think I drew a portion of it. I do not remember how much.

Q. What portion; please state as near as you can?

A. I do not now remember.

Q. Then you can't say what amount you drew out of the firm?

A. Not of that particular firm.

Q. You stated, I believe, that you and Robert N. Blackwood were partners in manufacturing plug tobacco during the working season of 1868; am I correct in this?

A. You are.

Q. I will now ask you if you, during that partnership, did not at different times borrow of different banks and others large sums of money to carry on said business?

A. We had discounted at various banks a considerable amount of paper known as "tobacco paper" or "acceptances." We also had some other borrowed money, not to any great extent, which was paid before or by the close of the same year.

371 Q. What amount or what sum of money was paid into your said firm as aforesaid by Robert N. Blackwood?

A. I do not now remember.

Q. Did he pay into the capital stock any money?

A. He put money into the concern; how much I do not now remember. The amount was not large.

Q. Did he, R. N. Blackwood, pay in as capital stock as much as one hundred dollars, or was he taken in as partner on a/c of his skill and experience as a manufacturer of plug tobacco?

A. He was taken in by furnishing more than that amount, I think, and also for his skill in the manufacture of tobacco.

Q. Then I understand you that all the capital in that firm, or nearly so, was furnished by yourself. Am I right?

A. A large part of the working capital was furnished by me upon my credit.

Q. The firm for the succeeding year, that is the working season of 1869, was composed of yourself, R. N. Blackwood, and Geo. H. Simpson. Is that correct?

A. It is.

Q. How much money did Geo. H. Simpson, when that partnership commenced, pay into the capital stock; I mean in the year 1869?

372 A. I do not now remember the exact amount, but think it was

something near three thousand dollars, as manufacturing capital, he not having any interest with real estate or machinery.

Q. Did your firm during that year borrow money of different banks & other parties to carry on said business?

A. I think not much, but negotiated with banks; accepted paper, which was always met at maturity; never lost a dollar in that way.

Q. Since you have been in possession of that land have you not collected the rents, profits, sold the fruits off of the same, & received the pay therefor?

A. All that has been I have.

Q. Have you from that time to the present paid the taxes on those lands?

A. I have all that's been paid.

Not being able to complete the taking of said deposition, by reason that the testimony of witnesses cannot be finished, I adjourn the further taking of the same till to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed stipulations.

373 G. N. CONNELL,
Notary Public.

Pursuant to adjournment, as above stated, on the 15th day of December, 1877, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon, at place stated in annexed stipulations, I continued the taking of said depositions as follows, to wit:

W. Y. Williams in continuation of his deposition commenced on the 10th instant.

Q. You say this forty-two acres of land when purchased by you was timbered land; as I understand from your former answers, you cleared the timber off, grubbed the land, cleared off the brush, and plowed the same. Am I correct in this interrogatory?

A. I had most of the timber cut or cleared off, done but little grubbing, and had ten acres plowed and put in condition.

374 Q. I will ask you if you have not cleared off the timber, brush, grubbed the land, plowed the same, and put the whole forty-two acres in cultivation?

A. I have not.

Q. How much of the forty-two acres is still in timber and brush, unimproved.

A. There is thirty a'res with some timber on it, but no brush, and the ground has never been broken. It is used for pasturage.

Q. Was the brush cleared off of that land and the grubbing done by you?

A. The greater part of the brush removed by me, but very little grubbing done, which I hired.

Q. Is this last thirty acres referred to sown in blue grass and clover by you?

A. It was not. There was some blue grass spots on the land which afterwards spread over the whole surface or nearly so.

Q. Then, as I understand you, the first twelve acres was cleared and plowed by you. Am I correct?

A. No. Only ten acres was cleared and plowed by me.

375 Q. What was it worth, Mr. Williams, to clear, grub, and plow that ten acres per acre?

A. I do not know; I paid one dollar per cord for cutting wood, which was near two hundred cords; I had not exceeding ten dollars' worth of grubbing done; the ground was broken and cultivated, I think, two seasons for one-half that was raised on the same.

Q. Have you not heretofore stated in this deposition the number of cords of wood cut on that land, and what you realized for it in full?

(This question is objected to by counsel for defendants William Y. and Sarah C. Williams, on the ground that the subject-matter inquired about is not pertinent to the issues in this case, and for the further reason that the facts testified to by the witness would appear with deposition itself.)

A. I have.

Q. Now please state what it was worth to clear, grub, & plow said ten acres of land per acre.

A. I do not know.

376 Q. Can you not approximate near what it would be worth; and, if so, please do it?

A. I cannot.

Q. This land had *it* on it a great deal of very rough timber, heavy brush, large quantity of old logs, covered nearly entirely with wild grape vines, did it not?

A. It did not; the twelve acres was mostly covered with young timber, saplings interspersed with some large timber, but little down timber or logs; there was perhaps some grape vines. The timber was all considered of good quantity for fire wood.

Q. I will ask you if it was worth as much as ten dollars per acre to clear, grub, and break said land.

A. I should think it was.

Q. The other thirty acres of land referred to, what was it worth per acre to clear off the brush, grub, clear off the logs, old dead timber, and prepare the same for a blue grass pasture?

A. I have but little idea, as I done a great deal of the clearing of the brush myself and removing logs, or burning same;

377 a large amount of the down timber I gave to other parties for removing same; I have stated heretofore that I paid one dollar per cord for cutting the wood.

Q. I will ask you if it was worth as much as ten dollars per acre to prepare the same for a blue grass pasture, including all the improvements you put there for that purpose?

A. It was not, exclusive of the cutting of the wood I have mentioned.

Q. I did not include in the foregoing interrogatory the cutting of the wood, but only asked the cost of preparing the lands for a blue grass pasture, what it was worth per acre to prepare the same; was it worth for said preparation as much as ten dollars per acre?

A. It was not, if the cutting of the wood is not included.

Q. Then if it was not worth ten dollars per acre, how much was it worth per acre?

A. I have but little idea, as I had it done by piecemeals, doing a great deal of the work myself.

378 Q. It was not worth ten dollars per acre, was it worth as much as eight dollars per acre?

A. I should think not.

Q. Then what was it worth, Mr. Williams?

A. I have but little idea, as before stated.

Q. Can't you approximate something like or near the actual cost of the same, your labor being worth as much as that of others; if so, state as near as you can?

A. I cannot say.

Q. You say, in your examination-in-chief, that during the working season of the year 1870 until August of the same year Jacob R. Harris, Robert N. Blackwood, George H. Simpson, and yourself were partners, under the name and style of J. R. Harris & Co. Is that correct?

A. It is.

Q. Who was book-keeper and cashier of that firm during that period?

A. My recollection is that it was Geo. H. Simpson.

379 Q. Do you know that he was book-keeper and *and* cashier of said firm?

A. Am satisfied that he was.

Q. About what date in the spring of the year 1870 was this copartnership formed, as near as you can recollect?

A. About March, I think.

Q. Did your firm have a book opened for capital stock paid in by each partner at or before the commencement of business?

A. Do not now know. There was a set of books kept by the firm.

Q. Then you don't know whether there was a stock book kept or not?

A. I do not recollect.

Q. How much capital was paid into that firm before you commenced business by the several partners?

A. I do not now know.

Q. Have you now in your possession the book of that firm, or are they now under your control?

A. They are not; neither are they under my control. The last I know of them they were in the hands or possession of Geo. H. Simpson.

Q. When did you see them last, at what place, and in whose custody?

A. Have not saw them for several years; last saw them in the factory, and, I think, were in possession of Geo. H. Simpson.

Q. Do you know whether Mr Simpson has possession of those books at this time or not?

A. I do not know.

380 Q. Then you say you cannot tell how much capital was paid into the capital stock of this firm at the date it commenced business?

Ans. I cannot.

Q. Can you tell how much stock in cash was paid in by each partner?

Ans. I cannot how tell.

Q. Was there any money paid into the capital stock by either partner before the firm began business?

Ans. I do not now remember; suppose there was.

Q. The new member of the firm you took in at that date, J. R. Harris, what capital did he put in, and of what did it consist?

Ans. My recollection is that Blackwood and myself took him in as equal partner with us in the real estate and machinery by he, Harris, putting into the factory sufficient machinery and fixtures for making equal partner with us. I think he put but little money, if any, into the firm.

Q. Then your cash capital of the firm stood upon the same basis it did before said Harris was taken in as a partner?

Ans. If you refer to the partnership as it existed in 1869, it did not.

Q. If Harris put in no money into the firm, how was the cash capital changed by taking him in as a partner?

(This question was objected to by counsel for defendants William Y. and Sarah C. Williams, on the ground that the same assumes the witness has testified to a state of facts which he has not testified to.)

381 Ans. I consider that there was no firm existing in the work of manufacturing tobacco at the time of the foundation of the partnership of J. R. Harris & Co., as the preceding firm had closed up its business of the season before. The cash capital, as used by them, was to a great extent withdrawn from the firm.

Q. You say you cannot now tell what the capital stock of said firm of J. R. Harris & Co., composed as aforesaid, how much cash capital said firm had paid in when it commenced business?

Ans. I cannot now tell, but think the amount was small.

Q. Did your said firm of J. R. Harris & Co. borrow large sums of money from the First National Bank of Quincy, Illinois, during the months of May, June, July, & August during the year of 1870?

Ans. The firm borrowed a considerable amount of money from the First National Bank of Quincy, Ills., during the spring & summer up to August of that year.

Q. Can you tell near what sum or amount your said firm borrowed from the First Nat. Bank of Quincy, Ills., from April, say the 1st, 1870, to the 1st day of September thereafter?

Ans. I cannot now remember.

Q. Was it as much as twenty-five or thirty thousand dollars?

Ans. Cannot tell, but think not that much.

Q. Did you & Geo. H. Simpson borrow from the Lagrange Savings Bank, in two different notes, as much as two thousand five hundred dollars, during said period of time, between the 1st day of April, 1870, & the 1st day of Sept'r thereafter?

Ans. I do not remember as to the date & amounts, but I endorsed paper for Geo. H. Simpson to that bank.

Q. Did your said firm of J. R. Harris & Co. borrow any other moneys from other parties than these mentioned during the time, date, & period above referred to? If so, how much, & from whom was the same borrowed?

382 A. I do not now remember; we may have borrowed from other parties, but cannot say.

Q. The money your said firm, J. R. Harris & Co., borrowed from the First National Bank of Quincy, Illinois, from the 1st day of April, 1870, to the 1st day of September thereafter, has the same, or any part thereof, ever been paid to said First National Bank by your said firm, or any member thereof?

A. I think a portion of it has been paid, but can't tell how much.

Q. By whom and when was it paid?

A. The principal part of the money borrowed of the bank was used in the manufacturing of tobacco, and when sold the proceeds, or a large amount thereof, were applied on said bank indebtedness.

Q. Has your said firm of J. R. Harris & Co. aforesaid, or any member thereof, ever made any payment or payments to said bank since the judgements in the circuit court of Lewis County, Missouri, wherein the First National Bank of Quincy, Illinois, was plaintiff, and your said firm of J. R. Harris, W. Y. Williams, George H. Simpson, and R. N. Blackwood were defendants?

383 A. Not that I know of.

Q. Have you or George H. Simpson ever paid the money you bor-

rowed, or any part thereof, to the La Grange Savings Bank during the year 1870?

A. If you refer to the amount heretofore spoken of, I think not, as far as I know.

Q. Have you or George H. Simpsen ever paid the two judgments, or any part thereof, rendered against you and Simpsen in the circuit court of Lewis County, Missouri, in the year 1874 or 1875, for near the sum of six thousand dollars, wherein the La Grange Savings Bank was plaintiff and yourself, George H. Simpsen, and others were defendants?

A. Not that I know of.

Q. Have your said firm of J. R. Harris & Co. paid off the other indebtedness by you above mentioned for borrowed money?

A. I don't understand the question.

Q. Now please answer the question. In all of your answers in your cross-examination your answers are frequently, "I don't recollect," "Can't remember," "Have now no recollection," "Can't tell,"
384 "Don't know," "Can't say whether it is or not," "My present impression is so & so," or "My recollection is so & so;" now do you mean to say by these evasive answers that you are absentminded, or is it for the purpose of evading the answer of the direct questions asked you?

A. In all the various and numerous questions that have been asked me I have tried to answer to the best of my knowledge and ability, but the different and various transactions about which I have been interrogated cover so much space of time, and as it is all from recollection I could not answer the questions propounded any more definitely than I have.

Re-examination-in-chief by defendant's attorney:

Q. You have, in your cross-examination, been asked very many questions which appear to me to be wholly immaterial to the questions at issue in this case, and I do not propose to interrogate you respecting such immaterial matter: there are two or three points, however, about
385 which I wish to make inquiry, in answer to one or more of the cross-interrogatories. You have spoken of Mr. Mann's interest in the tobacco factory having been sold by the government; was the same sold for any "crookedness" on his part whilst he was a partner of yours; if not, what was the same sold for, as you understand it?

A. It was sold, as I understand it, by the government for his indebtedness on his own account, or for taxes due the government by him and of his own manufacture of tobacco in Hannibal, Missouri.

Q. You have, in answer to one or more of the cross-questions, spoken of Wilsen Wakefield's having absconded whilst he was a partner of yours, or after your partnership with him ceased, and of the tax owing by him and you, or him, to the government; has such tax been paid?

A. It has.

Q. When was the same paid?

A. I do not remember distinctly, but it was in the early part of the year 1868.

And further deponent saith not.

386 WILLIAM Y. WILLIAMS.

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid.

G. W. CONNELL,
Notary Public.

Not being able to complete the taking of said deposition by reason that there are other witnesses to examine, and for the further reason that the plaintiffs and defendants, by their attorneys, consent and request an adjournment until Wednesday, the 19th instant, I therefore further adjourn the taking of the same until the 19th December, 1877, then to be continued at the same place and between the hours mentioned in the annexed stipulations.

G. W. CONNELL.
Notary Public.

Pursuant to adjournment, as above stated, on the 19th day of Dec., 1877, between the hours of 8 o'clock in the forenoon and six o'clock in the afternoon, at the office of G. W. Connell, as mentioned in the
387 annexed stipulations, I continued the taking of said deposition, as follows, to wit:

John K. Marks.

JOHN K. MARKS, of lawful age, being produced, sworn, and examined on the part of defendants, on his oath deposeth and says:

Q. What is your name, age, and place of residence?

A. My name is John K. Marks; age 43 years; and residence La Grange, Lewis County, Missouri.

Q. How long have you so resided in La Grange?

A. About nineteen years.

Q. What, if anything, is your occupation?

A. Carpenter and builder.

Q. How long have you been engaged in that business?

A. About twenty-five years.

Q. Are you acquainted with William Y. Williams and Sarah C. Williams, two of the several defendants in this suit; if yea, how long have you known them respectively?

A. Yes, sir; I have, to the best of my recollection, known W. Y. Williams for eighteen years and Mrs. Sarah C. Williams for sixteen years.

388 Q. Do you know the house in which they now live?

A. Yes, sir.

Q. Did you assist in the building of the same?

A. I did.

Q. When?

A. In 1868.

Q. In what capacity did you so assist in constructing said house?

A. I took the contract to build the house from the brick work?

Q. With whom, if any person, did you make the contract referred to by you in your last answer?

A. W. Y. Williams.

Q. At what time was said contract made?

A. In the early part of 1868.

Q. What was the said contract between yourself and the said William Y. Williams?

A. The contract was to do the carpenter's work, tinning, plastering, and painting.

Q. Were you, by the terms of said contract, to supply the necessary labor and material in the execution of said work?

A. Yes, sir.

389 Q. How much were you to be paid, by the terms of said contract, for the performance of your part thereof?

A. Thirty-four hundred and fifty dollars.
Q. Did you complete said work?
A. I did.
Q. When?
A. Completed the work in 1869.
Q. What part of 1869 did you so finish said house; please state as near as you can now remember?
A. Some time in the summer of that year.
Q. Were you, by the terms of said contract, required to construct any building or buildings other than the dwelling-house referred to by you?
A. No, sir; not in that contract.
Q. Did you contract buildings, other than the said dwelling house, upon the premises of the said William Y. Williams; I mean the premises where he now resides?
A. I did.
Q. At what time did you commence the construction thereof, and when did you complete the same; state as definitely as your re-
390 membrance enables you?
A. I commenced them in the early part of 1868, and part of them was completed in 1869.
Q. When were they entirely completed is what I mean?
A. In 1869.
Q. In what part of 1869 were they so completed?
A. Some time in the summer of 1869.
Q. In what did the building or buildings by you last above referred to consist?
A. Of barn, wash-house, and wood-house.
Q. Had you a separate contract with the said William Y. Williams for the construction of the barn, wash-house, and wood-house referred to?
A. Yes, sir.
Q. What were the terms of the said last-named contract?
A. I disremember the contract on the barn. For building wash-house and wood-house, to the best of my recollection, was three hundred dollars.
Q. Were you required by the terms of said last-named con-
391 tract to furnish the labor and materials used and employed in the construction of said barn, wood-house, and wash-house?
A. Yes, sir; I furnished everything.
Q. Have you ever been payed for the work and materials employed in the construction of said dwelling house, barn, wood-house, and wash-house?
A. Yes, sir.
Q. When, and by whom?
A. I received it from W. Y. Williams, at different times. I received a thousand dollars up to some time in July or August, 1868. Then there was another thousand dollars paid me in the latter part of 1868 or beginning of 1869, and the balance at different times in 1869.
Q. In what part of the year 1869 was the final payment made; state as near as you can now remember?
A. Some time in the summer, to the best of my recollection.
Cross-examination by plaintiff's attorney:
Q. You say, in your examination-in-chief, that you contracted
392 with W. Y. Williams to furnish material in finishing the brick house, in the year 1868. Now, what time or in what month of that year did you commence said building?

A. I began to get the material and do the work some time in the spring; couldn't say the exact time.

Q. Please tell, as near as you can, what material you were to furnish by the terms of said contract?

A. I was to furnish all the wood work, frames, hardware, plastering, tinner's work, painting, and to do all the labor, or furnish the same.

Q. You say the amount you received for it was three thousand four hundred and fifty dollars?

A. Yes, sir.

Q. At what date, in the year 1869, did you complete said building, as near as you can recollect?

A. Some time in the summer of 1869; could not tell the date or the month.

Q. You say, in your examination-in chief, you contracted with W. Y. Williams to build for said Williams a barn on his said premises;
393 will you please state of what kind of material the same was built, the size, and height of the same?

A. It was built of barn siding, joists, stredding, and some flooring for the door, and covered with shingles. It was 24 feet square, I belie', but not positive, and sixteen feet high.

Q. What kind of foundation was that barn built on?

A. It was built on rock foundation.

Q. Did you furnish the zinc for the roofing, oils, and paints, and do the painting on the same?

A. There was no zinc used. I furnished the tin for the square on top, to the best of my recollection; furnished the oils and paints, and did the painting.

Q. Now tell us what you received for furnishing all the material and building said barn.

A. I don't recollect, and could not answer.

Q. You say, in your examination-in chief, you received three thousand four hundred and fifty dollars for the wood work and labor in finishing the dwelling house; now, was the verandah included, and so built by you in said contract?

394 A. No, sir.

Q. Did you build said verandah afterwards?

A. Yes, sir; I built the verandah.

Q. What date was said verandah built?

A. Think it was in 1869.

Q. What did you receive for building the same?

A. I don't recollect the sum I received for that.

Q. Did you furnish the material, oils, and paints, and complete the same?

A. No, sir.

Q. I understand you are a practical carpenter; now I will ask you what it would have cost, in the year 1869, to build a verandah the length, the height, width, and style of the one referred to?

A. It would cost in the neighborhood of five hundred dollars.

Q. You were at work for Mr. Williams off and on, by your examination-in-chief, for near the space of two years; did you ever have, during that period of time, any conversation with W. Y. Williams con-
395 cerning the title of the land on which you were at work; if so, state what it was, as near as you can recollect?

(Objected to by counsel for defendants William Y. and Sarah C. Williams, for the reason that the witness is interrogated concerning new matter, and matters and things about which he was not questioned

in his examination-in-chief, and as not being a proper matter for cross-examination.)

A. I did not work there as much as two years. I don't recollect any conversation in regard to the land, or the title to the land.

Q. Then you did not at any time you so worked for said W. Y. Williams hear said Williams say anything about the title of said land, nor in whose name the title then stood?

(Objected to by counsel for defendants William Y. and Sarah C. Williams, for the reason that the question solicits an answer from the witness concerning new matter, and matters and things about which he was not interrogated in his direct examination.)

A. No, sir; don't recollect of conversation at all about same.

396 Q. Did you at any period of that time hear W. Y. Williams say or speak of whom he purchased said lands?

(Objected to by counsel for defendants William Y. and Sarah C. Williams, for the reason that the matters and things inquired about are not proper matters of cross examination.)

A. No, sir; don't recollect of hearing him say at any time of whom he purchased the land.

Further deponent saith not.

JOHN K. MARKS.

Subscribed and sworn to before me, on the day, at the place, and within the hours mentioned in annexed stipulations.

G. W. CONNELL,
Notary Public.

James H. Skinner.

JAMES H. SKINNER, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

Q. What is your name, age, and place of residence?

A. My name is James H. Skinner; my age is 31 years; my

397 residence Lewis County, Mo.

Q. Are you acquainted with William Y. Williams and Sarah C. Williams, defendants in the suit mentioned in the caption to this deposition; if yea, how long have you known them respectively?

A. I suppose I am acquainted with the parties you have referred to.

Q. Do you know William Y. Williams, of Lewis County, of Missouri; if so, how long have you been acquainted with him?

A. Yes; have known him sixteen or seventeen years.

Q. Are you acquainted with defendant Sarah C. Williams; if yea, how long have you known her?

A. Yes; have known her ten or fifteen years.

Q. Is she not the reputed wife and has she not lived with said William Y. Williams, in Lewis County, Missouri, since you first made her acquaintance?

A. Yes.

398 Q. How long have you resided in said Lewis County?

A. All my life.

Q. Did you ever sell any lands to the said William Y. Williams or Sarah C. Williams; if yea, when?

A. Yes; I sold twelve acres of land to W. Y. Williams about September, 1867.

Q. Did you give him a deed for said land at the time of making such sale?

A. I did not.

Q. Was said sale made to W. Y. Williams, or to him as agent for his wife?

A. I don't think his wife was mentioned at the time of the sale; if she was, I do not remember now.

Q. Did you ever make a sale of any other lands to the said William Y. Williams, other than that heretofore mentioned by you in this deposition; if yea, when?

A. I traded him about thirty acres of land for a house and lots. I think it was in January, 1868. I am not certain.

399 Q. State as near as you can now remember the number of acres of land included in your two said sales to said William Y. Williams.

A. About forty-two acres.

Q. Are you a married man?

A. Yes, sir.

Q. When were you married?

A. In 1866.

Q. What is your wife's name?

A. Mattie C. Skinner.

Q. Please look at the deed now shown you and state whether or not you executed the same, together with your said wife; if yea, state when, where, and how you came to execute the same.

A. I did, on the 11th day of February, 1868, in La Grange, Lewis County, Missouri. In the first place I sold twelve acres of the land for eighteen hundred dollars; he paid me nine hundred dollars in cash and gave me his note for nine hundred dollars, due in ninety days I think, and I gave a bond for a deed to W. Y. Williams or to his wife: I think it was to him; when the note came due he paid me the money; that was between the 15th and 20th of December, 1867. My wife
400 was not at home, but when she came home I made the deed, some time in January, 1868, I think, for the twelve acres. A few days after that I traded him thirty acres, and he said he had not had the first deed recorded, and he would rather have it all in one deed and I made a deed to forty-two acres. The deed for the twelve acres was made to Sarah C. Williams, and I think he gave me up this deed, and it was destroyed or mislaid, and I gave a deed to the forty-two acres.

Q. Is not the deed referred to by you in your last answer, I mean the one for forty-two acres, the same deed of which Exhibit A attached to the foregoing deposition of W. Y. Williams is a copy?

A. I think it is.

Q. What was the consideration for said conveyance?

A. Eighteen hundred dollars in money and a house and three lots in this town.

Q. From whom did you receive the eighteen hundred dollars mentioned by you?

A. From W. Y. Williams.

Q. When was said eighteen hundred dollars paid to you?

A. Nine hundred was paid, I think, in the latter part of Sep-
401 tember, 1867, and the remainder about the 20th of December, 1867.

Q. When did said W. Y. Williams convey to you the house and three lots as part of the consideration for the forty-two acres of land you so conveyed to his wife?

A. I got the deed from James L. Peake. He made the deed about the last of January, or 1st of February, 1868, at the instance of William Y. Williams.

Q. Please look at the deed now shown you, of which Exhibit B attached to the foregoing deposition of William Y. Williams is a copy, and state whether or not you executed said deed.

A. I executed the deed now shown me, of which I presume said Exhibit B is a copy.

Q. When?

A. On the 13th day of December, 1871.

Q. Why, for what reason, did you execute this deed?

A. This deed was made to correct a deed which was made on the 11th day of Feb'uary, 1868.

Q. Is not the deed of date Feb'uary 11th, 1868, referred to by you in your last answer, the same of which Exhibit A attached to the
402 foregoing deposition of William Y. Williams purports to be a copy?

A. I suppose it is.

Q. Which of said deeds properly described the land you intended to convey to said Sarah C. Williams: the one of date Feb'uary 11th, 1868, or the one of date December 13th, 1871?

A. The deed of December 13th, 1871.

Q. Was not the consideration for said two conveyances one and the same, I mean the eighteen hundred dollars and the house and lots about which you have testified?

A. It was.

Q. Then, if I understand you correctly, your said deed of date December 13th, 1871, was made for the sole purpose of conveying the property which you intended to convey by your said deed of date Feb'uary 11th, 1868, and said second deed was made for the purpose of correcting a misdescription of the lands intended to be conveyed by you by said deed of date Feb'uary 11th, 1868: am I correct in this?

A. You are.

Q. When did you receive the full consideration for said conveyances; state as nearly as you can now remember?

(Objected to by plaintiff's attorney, as the question has been
403 answered twice before by the same witness, it only being cumulative,)

A. I received nine hundred dollars about the 20th September, 1867, and nine hundred dollars about the 20th of December, 1867, and balance about the first of Feb'uary, 1868.

Q. When did said defendants Williamses take possession of the lands you so conveyed?

A. I think they took possession of the twelve acres about the last of September, 1867, and the remainder about the first of Feb'uary, 1868.

Cross examined by plaintiff's attorney:

Q. You say in the sale of this land, the first twelve acres, you received nine hundred dollars in cash, and a note for nine hundred more due in ninety days. Was this last nine-hundred-dollar note paid when due?

A. About that time. I couldn't say to the day exactly.

Q. Was anything said to you by W. Y. Williams at the date of the sale or on the payment of the note about the trouble W. Y. Williams had had with his *with his* partner Wakefield?

404 A. At the time he paid off the note there was something said about it. There was nothing said about the trouble with Wakefield at the time of the purchase of said lands of me.

Q. Please state fully what was said to you by W. Y. Williams at the payment of the note to you by Williams about the troubles he, Williams,

had had with Wakefield. I mean financial troubles.

(Objected to by counsel for defendants on the ground that the matters inquired about by this question was immaterial to the issues in this case, and for the further reason that the witness was not, in his direct examination, asked anything as to the conversation, if any, inquired about in this interrogatory.)

A. A few days before the note was due Mr. Williams come to me and told me he might not be able to pay the note when it was due, that Mr. Wakefield had run off and left him sum' debts to pay, and that he did'nt know how bad he had got him yet. The day he paid me the money he told me to come down to the office and he paid me the money,
405 and I asked him how bad Wakefield had got him, or if he knew how bad he had got him, and he say he didn't know the amount, but he didn't think it was as bad as he first thought.

Q. Had you, at any other time during the year of 1867, any other conversation with Mr. Williams about the losses he sustained by Wilsen Wakefield, his former partner?

A. I did not.

Q. Were you personally acquainted with Wilsen Wakefield at the time he was engaged in the manufacture of tobacco in this place, in the year 1867, and a partner of W. Y. Williams?

A. I knew the man by sight, but don't know that I ever spoke to him in my life.

Q. Why was it that you and your wife made the deed you refer to, of the eleventh of Feb'uary, 1868, after your sale to W. Y. Williams, to Sarah C. Williams; what was said to induce you to make the deed to her—said Sarah C. Williams?

A. Mr. W. Y. Williams told me to make the deed to her. He told me to make the deed to his wife; that he thought that everybody
406 ought to provide for their family when they could; that a man couldn't tell what might happen; that it looked as if everybody you had anything to do with tried to beat you. This conversation took place at the same time we spoke about the Wakefield matter, which was at the time the note was paid as aforesaid, as I recollect the conversation.

Q. What do you know about this man Wakefield running off from here in the fall of 1867, and leaving a large indebtedness behind for his partners to pay?

A. I don't know anything only hearsay—only what Mr. Williams and others told me.

Q. At the date of the sale of the aforementioned real estate were you acquainted with the business of W. Y. Williams and others? If so, state what business they were engaged in at the city of La Grange.

A. Mr. Williams was engaged in manufacturing tobacco. I don't know how many partners he had.

Q. You say the deed to the house and three lots was made to you by James L. Peake at the instance of W. Y. Williams; do you know whether the property had been sold by Williams to Peake, or whether the
407 title to the same had been transferred to said Peake, and money advanced by Peake thereon to Williams to invest in his said tobacco business?

Ans. I do not know. Mr. Williams told me he had bought the place of Peake, but that he had not got a deed to it, and that Peake would make the deed to me—that there was no use making two deeds to it.

Q. You say defendants Williams took possession of the twelve acres

first sold about the last of September, 1867. Please state what kind of possession they had at that date, & during the winter following.

Ans. Mr. Williams had hands there chopping wood part of the time; I fenced said twelve-acre piece for him on the south & west, in the fall & winter of 1867.

Q. At what time or date, as near as you can recollect, did Mr. Williams & family move on the premises?

A. It was late in the year of 1868, I think.

And further deponent saith not.

JAMES H. SKINNER.

Subscribed and sworn to before me, on the day, at the place, and within the hours first aforesaid.

GEO. W. CONNELL,
Notary Public.

Thomas Pryce.

THOMAS PRYCE, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

Q. What is your name, age, and place of residence?

408 A. Thomas Pryce; age 53; residence La Grange, Lewis County, Missouri.

Q. How long have you resided there?

A. About twenty-eight years.

Q. Were you acquainted with William Y. Williams and Sarah C. Williams, two of the several defendants in this suit?

A. Yes, I am acquainted with them.

Q. How long have you known them respectively?

A. About twenty-four years; that is William Y. Williams and his wife.

Q. Were you ever connected with the said defendants, the La Grange Savings Bank?

A. Yes.

Q. When? State particularly.

A. I was connected with the La Grange Savings when first organized: indirectly, however. I was secretary, and I also acted as cashier for J. A. Hay, who was really the cashier of the bank; cannot state what year certainly, think it was in 1866. In 1870, I think, I was cashier of the La Grange Savings Bank.

Q. Were you connected with the La Grange Savings Bank continuously from the time of its organization in 1866 until 1870; if not,

409 please state as near as you can what part of that period of time you were so connected therewith?

A. I was connected with it indirectly, as before stated, from its organization until 1869; then I was out of it a year, from April, 1869, until April, 1870; I had no connection with it from April, 1870, to Feb'uary 1st, 1871.

Q. Did the said William Y. Williams have any business transaction or transactions during the time or times you were so connected with said bank?

A. Yes.

Q. Please to state the nature and extent of the same as near as you can now remember.

A. He kept his deposit a/c then; collections on him for sales of to-

bacco were made through the La Grange Savings Bank; I don't remember of any discounts made to him.

Q. In your last answer you speak of collections on tobacco being made through said bank, of the said William Y. Williams; was he engaged in business at that time on his own account, or was he in partnership with some other person or persons?

A. He was in partnership with some other persons.

410 Q. Then the collections were not, as I understand you, against him, but were against the firm of which he was a partner; am I correct in this?

A. Yes.

Q. Please state as nearly as you can what the amount of the deposits of the said firm were during the time of your said connection with said bank.

A. I can't positively state any amount; I cannot approximate the amount. I would say that the amount was large considering the amount of business done in the town at that time and in the bank; it was one of the largest accounts we had.

Q. Please to state, as near as you can now remember, the amount of collections made through said bank against the partnership of which said W. Y. Williams was a member, during the time you were so connected with the same.

A. I haven't the slightest idea of the amount; have no means of ascertaining; couldn't carry such things in my memory.

Q. Were the same large or small?

411 A. Would state that relatively would be small for St. Louis or Quincy; would be good size for our place.

Q. Were the claims against said partnership of which said William Y. Williams was a member, which you say were placed in said bank for collection, promptly paid or otherwise?

A. They were always promptly paid.

Q. Please to state whether you ever made an examination of the books of the partnership of which said William Y. Williams was a member; and, if yea, when?

A. I did make an examination, but cannot say when; do not know what year it was in.

Q. Can't you approximate?

A. It was during the time I was connected with the La Grange Savings Bank; I think it was in 1867; am not positive about it.

Q. Of whom did the partnership at that time consist?

A. W. Y. Williams was a member, Robert N. Blackwood was a member. To the best of my recollection *and* the examination of the books extended over the time during which Mann was a member; can't remember the year.

Q. Was such examination made prior or subsequent to the year 1870?

412. A. Prior.

Q. Who, if any one, assisted you in making such examination?

A. It was a United States revenue agent, but have forgotten his name.

Q. Please to state whether such examination of the books of said concern disclosed the solvency or insolvency of the same.

A. That examination had nothing to do with the solvency or insolvency of the firm; that examination was made for the purpose of ascertaining whether the tobacco manufactured was properly returned and accounted for.

Q. What was the result of such examination with reference to the object for which it was made?

A. We found that the reports returned to the assessor's office were correct.

Q. Have you any means of knowing the financial condition of said William Y. Williams during the period of time included between the fall of 1867 and the spring of 1870?

413 A. I have no special means of knowing; my knowledge of his financial condition during that time was obtained through my general business with him.

Q. Please to state, from your knowledge obtained by you as you say through business transactions with the said William Y. Williams between the fall of 1867 and the spring of 1870, whether or not he was solvent at that time.

A. I think he was perfectly so.

Q. Do you know of any other matter or thing material to the issue in this case than what you have already stated; if yea, please to state the same now as fully and specifically as if specially interrogated thereto?

A. No. I have nothing further to state.

Q. Were you acquainted with the business habits and reputation of the said William Y. Williams as a business man for any length of time; if yea, how long?

Ans. Yes; I was acquainted with him as a business man for twenty years or more.

Q. Please state the character of such habits & reputation of the said William Y. Williams during the time you were acquainted with the same.

414 Ans. As a business man he was industrious, sober, prompt with all his obligations. He was gentlemanly in his deportment & his [illegible] reputation was unsullied.

Cross-examined by pltff's atty:

Q. You say in your examination-in-chief that you was connected with the LaGrange Savings Bank when it was first organized as secretary and also acted for J. A. Hay as assistant cashier. Please state whether you signed the name of J. A. Hay as cashier, or did you sign the name of J. A. Hay, cashier, by Thomas Pryce, assistant cashier.

Ans. I did not sign the name of J. A. Hay, by Thomas Pryce, assistant cashier. I did not regard myself as assistant cashier. I had no responsibility as assistant cashier. I did the cashier's work for him, however.

30. Q. In your examination-in-chief you say that W. Y. Williams & Co. kept an ⅞ with the LaGrange Savings Bank during the year 1866, 1867, & 1868, that their business was a deposit ⅞ and their tobacco paper was collected there. Do I understand from you that there were collections sent from St. Louis & other points to said bank for collection?

31. Q. Do you remember of their having discounted in said LaGrange Savings Bank large amount or amounts of what is commonly called "tobacco paper," drawn on different parties, at different points, at different times, during said period of time?

Ans. I intended that deposit ⅞ to cover that when I gave it in.
415 I have no doubt they drew a large amount of acceptances. I meant by "discounts" that they did not draw money over their own name.

32. Q. Did they not during that period of time discount a large amount of paper drawn by them on various parties against insufficient, & on which paper there was no acceptance?

A. I don't recollect of it. Don't say it wasen't so. It wasen't usual, I don't think.

33. Q. Did not W. Y. Williams & Co., in the year 1867, have their own note or notes discounted in said Lagrange Savings Bank for large sums of money, at different times?

Ans. I don't remember the instances. I don't remember any instance really.

34. Q. Do you remember that in the month of June, 1867, that said firm, W. Y. Williams & Co., had their note discounted in said Lagrange Savings Bank for the sum of three thousand dollars, on 60 or 90 day paper?

Ans. I don't remember any instance, as I stated before.

35. Q. Do you remember that W. Y. Williams & Co. had their own note discounted in the Lagrange Savings Bank about the latter part of July or 1st of August, 1867, for the sum of three thousand dollars, on 60 or 90 day paper?

Ans. I don't remember any instance, as I stated before.

36. Q. Did not the said W. Y. Williams & Co., in the fall of said 1867, at divers times, have their paper discounted in the Lagrange Savings Bank for large sums of money at different times?

416 Ans. I have no recollection of such discounts. Men doing business in the way they were, it would be remarkable if they did not, but I don't recollect of it.

37. Q. Please state if W. Y. Williams & Co. did not, in the year 1868, at different times, have large sums of paper discounted in the Lagrange Savings Bank of what was generally known as "tobacco paper," and also their own individual notes.

Ans. I think it likely that they got acceptances discounted, but don't recollect of any firm notes being discounted.

38. Q. What I mean by a firm note is this: one of the partners make a joint note and the others sign it individually. Do you remember such notes as them being discounted?

Ans. I don't recollect any such note being discounted.

39. Q. I will ask you if it was not customary, during the three years heretofore spoken of, whenever said W. Y. Williams & Co.'s % in said bank was overdrawn, or when they fell behind, for them to come into said bank and have their note or notes discounted & have the proceeds carried to their credit?

Ans. I don't remember of their % falling behind. It was customary in such cases to have notes given, but I don't remember of any instance with this firm.

40. Q. Do you remember in the spring of 1870 of a note of Geo. H. Simpson, W. Y. Williams, & Robert N. Blackwood, for one thousand dollars, due the Lagrange Savings Bank, of which he renewed with the same securities, the bank letting him have six hundred dollars or upwards more, making the note when renewed something over sixteen hundred dollars?

417 Ans. I remember very distinctly that Geo. H. Simpson had a note there for about sixteen hundred and eighty-five dollars, with W. Y. Williams as one of the securities, but don't remember who the other signer was. This was in the spring of 1870.

41. Q. I would ask if you do or do not know that the renewal of this note above referred to was on % of a one-thousand-dollar note—sum of money borrowed by Geo. H. Simpson, Wm. Y. Williams, & Robert N. Blackwood in the year 1867; that the balance of said note, to make it up to sixteen hundred dollars, was money received by said Simpson when said note was so renewed by himself, Williams, & Blackwood?

Ans. I don't know that that note of sixteen hundred & eighty-five dollars was made up in that way; my impression is that the amount of that note was made up by about $800 over-draft, in the fall of 1869, and a remnant of one or two other notes. I think one of these remnants was a note of Cashman & Olds. I think that in the spring of 1869 Simpson wasn't owing anything at the bank on his own account.

42. Q. You speak of the solvency of Mr. Williams in the years 1867 to 1870. Do you know anything of Mr. Williams filing voluntarily a petition in bankruptcy? If so, state what you know about it.

(Counsel for defendants William Y. and Sarah C. Williams that he need not answer such questions except so far as he may be warranted in so doing by his own personal knowledge.)

418 A. I have heard it; have no personal knowledge of it.

Q. Do you know or not whether W. Y. Williams obtained a discharge in bankruptcy from his indebtedness?

A. No, I don't.

Q. Are you not yourself, Mr. Pryce, now in bankruptcy on your own petition as to your individual indebtedness?

(The question is objected to by counsel for defendants William Y. and Sarah C. Williams, because it does not affect the credit of the witness, is not material to the issue, and is not a proper matter of cross-examination.)

A. No; I am not.

Q. Then you are not in bankruptcy at all?

(Objected to by counsel for defendants William Y. and Sarah C. Williams, for the reason urged in the last preceding objection.)

A. I am in bankruptcy as a member of the firm of Lewis Leils & Co., on petition of Lewis Leils. Have not filed any individual petition.

And further deponent saith not.

THOMAS PRYCE.

Subscribed and sworn to before me on the day, at the place, 419 and within the hours first aforesaid.

G. W. CONNELL,
Notary Public.

Not being able to complete the taking of said deposition, by reason that there are other witnesses to be examined, I adjourned the further taking of the same till to-morrow, there to be continued at the same place and between the same hours mentioned in the annexed stipulations.

G. W. CONNELL,
Notary Public.

Pursuant to adjournment, as above stated, on the 20th day of December, 1877, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at the office of G. W. Connell aforesaid, I continued the taking of said depositions as follows, to wit:

Robert L. Ager.

ROBERT L. AGER, of lawful age, being produced, sworn, and examined on the part of the defendant, deposeth and saith:

Q. What is your name?

A. Robert L. Ager.

Q. Where do you live?

A. At Canton, Lewis County, Missouri.

Q. What is your business, and how long have you been engaged in the same?

420 A. Bricklaying; have been engaged in it forty-two years.

Q. Are you acquainted with the defendants William Y. and Sarah C. Williams; if yea, how long have you known them respectively?

A. I am acquainted with them; have known them both for twenty years and over.

Q. Do you know the house in which they now reside?

A. Yes, sir.

Q. Did you assist in the building of the same?

A. Yes, sir.

Q. In what capacity; what did you do in the construction of said house?

A. I was one of the contractors, and assisted in laying up the brick work.

Q. With whom did you make the contract referred to in your last answer, and when?

A. I made the contract with defendant William Y. Williams, to the best of my recollection and my book; it was some time in the latter part of July or first of August, 1868. It was some time in the summer of 1868.

421 Q. What was the said contract between you and Mr. Williams?

A. We were to furnish the lime, sand, and labor.

Q. What labor do you mean in your last answer?

A. Bricklaying and hod-carrying.

Q. Who was your cocontractor for the work about which you are testifying?

A. Luther Simpsen.

Q. How much were you and the said Simpsen to be paid for the laying of the bricks for said house?

A. We were paid so much by the thousand, to be measured in the wall.

Q. Did you do such work; I mean did you and the said Simpsen lay up the brick work for said house?

A. We did.

Q. When?

A. We completed the work in September, 1868.

Q. Have you been paid for such work?

A. Yes, sir.

Q. When, and by whom?

A. I measured up the work, and Mr. Simpsen came down and drew the money and gave a receipt for it, some time in September, 1868. It was paid by Mr. Williams, as I understood it.

422 Cross-examination by plaintiff's attorney:

Q. How many rooms are in that building?

A. I cannot tell; the walls are from 22 to 25 feet in height from the stone work. The whole depth of the building, including ell, is from 40 to 50 feet, and width in front about 30 feet, and two stories high. I should judge there were six or eight rooms in the building. I have not been there since it was divided up, until to-day. I consider it a good job; our work amounted to about seven hundred dollars.

Q. Are you acquainted with the cost of such buildings at that time?

A. Only as to the brick work.

ROBERT L. AGER.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

G. W. CONNELL,
Notary Public.

George H. Simpson.

GEORGE H. SIMPSEN, of lawful age, being produced, sworn, and examined on the part of the defendants, on his oath deposeth and saith:

423 Q. What is your name, age and place of residence?

A. My name is George H. Simpsen; age 43 years; residence Lewis Co., Missouri.

Q. How long have you lived there?

A. Twenty-four years.

B. Are you acquainted with William Y. Williams, one of the several defendants in this suit? If yea, how long have you known him?

A. I am; have known him for thirty years or more.

Q. Have you ever been engaged in any business copartnership with him?

A. Yes, sir.

Q. At more than one time?

A. I have.

Q. Please state when you first formed a copartnership with him.

A. March, 1857.

Q. What was the object of that partnership?

A. It was for the purpose of carrying on a general mercantile business.

Q. Who composed said firm?

A. Thomas Richardsen, W. Y. Williams, and myself, under the firm name of Richardsen, Simpsen & Co.

Q. How long did that firm continue in business?

A. For three years.

Q. Where was such business carried on?

424 A. In the city of La Grange.

Q. Are you acquainted with the financial condition of the said William Y. Williams during the entire term of said copartnership?

A. I think I was.

Q. How was said partnership terminated; by consent or otherwise?

A. By limitation.

Q. Was or was not the said William Y. Williams, during the entire term of said copartnership, and at the expiration thereof, able to meet his obligations and discharge his liabilities?

A. He was.

Q. Were you ever engaged with the said William Y. Williams in any business copartnership other than the one already mentioned by you?

A. I was.

Q. When, during what time?

A. A part of 1869 and a part of 1870.

Q. What was the nature of it?

A. The manufacture of plug tobacco.

Q. What person or persons, if any, besides yourself and the said William Y. Williams were members of said last-named firm?

425 A. In 1869 R. N. Blackwood was one of the partners; in 1870 J. R. Harris was also a partner, or a part of '70.

Q. Please state the firm name and style of partnership of 1869, consisting of the said William Y. Williams, Robert N. Blackwood, and yourself.

A. W. Y. Williams & Co.

Q. Was the firm name and style of the partnership changed upon the admission of J. R. Harris? If yea, to what?

Ans. Yes. It was changed to J. R. Harris and Co.

20. Int. When was the said J. R. Harris admitted?

Ans. In the spring of 1870.

21. Int. What part of the year 1869 was the said firm of William Y. Williams and Co. organized?

Ans. In March or April.

22. Int. Were you acquainted with the financial condition of the said William Y. Williams during the period of time between March, 1869 and the spring of 1870?

Ans. I was to some extent.

23. Int. Please state whether he was or was not, during the period of time last referred to, able to meet his obligations and discharge his liabilities.

426 A. I think he was.

24. Int. Please state what interest, if any, the said William Y. Williams had in the real estate and building, and machinery therein situated, when the business of the said William Y. Williams and Co. was carried on.

A. One-half.

25. Int. Please state what the half interest of the said William Y. Williams in the real estate and machinery aforesaid was reasonably worth in the spring of 1870.

A. At that time it was worth from five to seven thousand dollars

26. Int. Please state what the interest of the said William Y. Williams in the working capital of said concern amounted to or was worth in the year 1869.

A. My impression is that he had in six thousand dollars or over. I mean working capital.

27. Int. Had you any interest on the real estate and machinery aforesaid?

A. I had not.

28. Int. Did you account to the said William Y. Williams and Robert N. Blackwood, in lieu of said interest; if so, in what way?

427 A. I suppose I did, as that was our agreement, in the way of rent.

29. Int. What rent per annum?

A. I don't remember now.

30. Int. Can't you approximate?

A. My impression is I was to pay about ($500.00) five hundred dollars.

31. Int. What were the terms and conditions upon which the said Jacob R. Harris was admitted into said business; state fully? I mean what did he pay for the interest he obtained in the real estate and machinery of said concern?

A. He bought one-third interest in real estate and machinery, and paid for it with machinery out of his Covington factory, and machinery from Quincy. What valuation was placed on it I don't know.

32. Int. How long did the firm of J. R. Harris & Co., of which the said William Y. Williams was member, continue?

A. Continued from April to some time in August, 1870.

33. Int. Was the same at that time dissolved (in August)?

A. That was my understanding.

34. Int. In what way?

A. By Dr. J. A. Hay and John Sisler taking the interests of W. Y. Williams and R. N. Blackwood, both in the real estate and the tobacco business.

428 35. Int. Did the said J. A. Hay and John Sisler purchase the interests of said W. Y. Williams and Robert N. Blackwood from them directly, or did the said Williams and Blackwood dispose of their interests to J. R. Harris, and Sisler and Hay purchase from Harris?

A. Williams and Blackwood sold their interests to Harris, and Harris sold to Hay and Sisler, Williams and Blackwood taking in payment from Harris real estate in Quincy, Ills.

36. Int. What arrangements, if any, was made at the time of the dissolution, between Williams and Blackwood on the one part, and the said Jacob R. Harris on the other, with reference to the liabilities and assets of the late concern.?

A. Mr. Harris told me that Hay and Sisler were to take the place of Williams and Blackwood; were to assume all the liabilities, and to have all the assets belonging to Williams and Blackwood.

37. Int. Was or was it not a part of the consideration moving between the said Williams and Blackwood, and Jacob R. Harris,

429 for the sale of their interests in said property to him, that he (Harris) was to assume all the liabilities of the said William Y. Williams incurred in said business?

A. Yes; I heard him say he was to release them from all further obligations—any further than they were to work then the balance of the season.

38. Int. Do you know of the said William Y. Williams becoming obligated upon any paper with the said Jacob R. Harris and others, during the spring and summer of 1870; if yea, on what?

A. Yes; on paper of First National Bank of Quincy, Ills., and some other paper.

39. Int. What was the nature of said Williams' obligation on such paper?

A. It was paper signed J. R. Harris & Co., he (Williams) being one of the firm.

40. Int. You refer now to the paper executed by the firm prior to its dissolution, do you not?

A. I do.

41. Int. Please state whether the paper you have referred to in your last answer was not renewed after the dissolution of the firm

430 of J. R. Harris & Co., of which William Y. Williams was a member, the names of new securities appearing on such notes of renewal.

A. My impression is that some of it was renewed and some of it was not.

42. Int. Did the said William Y. Williams become obligated upon such note of renewal after the dissolution of the said J. R. Harris & Co.?

A. The firm remains the same in name J. R. Harris & Co., and all paper renewed or signed after that was signed J. R. Harris & Co.

43. Int. What was the nature of the obligation of said William Y.

Williams on said paper—notes of renewal as security—endorser, guarantor, or otherwise?

A. We considered him out. I don't recollect of his signing the paper of the firm of J. R. Harris & Co. after the dissolution.

44. Int. Do you remember of J. A. Hay and John Sisler signing any of such notes of renewal?

A. I think they did.

45. Int. Did they sign as principals or otherwise?

431 A. I don't know; the paper was signed J. R. Harris & Co., and there was invidual names under it.

46. Int. Can you now state what was the occasion or consideration for giving the first of said notes held by the First National Bank of Quincy?

A. It was between eleven and twelve thousand dollars, given for leaf tobacco, which Mr. Harris said belonged to him and Penfield.

47. Int. Do you mean Uri S. Penfield, one of the plaintiffs in this suit?

A. I do.

48. Int. State whether or not the firm of J. R. Harris & Co., after the said William Y. Williams and Robert N. Blackwood retired therefrom, and while the same consisted of Jacob R. Harris, J. A. Hay, and John Sisler and yourself, contracted debts by reason of losses sustained on tobacco.

A. There was a loss of several thousand dollars made by a sale of tobacco in Chicago at one time. There were some other small losses.

49. Int. State whether or not the firm of J R. Harris & Co., com-

432 posed of Hay, Sisler, Harris, and yourself, were not compelled, by reason of such losses, to borrow considerable sums of money.

A. I don't remember of having to borrow much money after that.

50. Int. How were the losses, spoken of by you, on sales of tobacco occasioned? State fully.

A. Mr. J. R. Harris sold large quantities of tobacco to two Jew houses in Chicago. After receiving the tobacco they failed. We had to compromise with them, getting, I think, thirty cents on the dollar for a part, and fifty cents on the dollar on the other.

51. Int. Was the tobacco mentioned by you in your last answer sold upon time; if yea, what time, and were notes taking therefor?

A. The tobacco was sold on sixty or ninety days. We had acceptances for a part of it, but they failed before we got the last acceptances. In other words they failed as soon as they got the last shipments.

52. Int. Were such acceptances discounted? If so, where?

A. What had been discounted were discounted at the First

433 National Bank of Quincy.

53. Int. After the failure of the parties to whom such tobacco was sold, was the firm of J. R. Harris & Co., last above referred to, called upon by the First National Bank of Quincy to make such acceptances good?

A. They did, and we turned them over all the tobacco we had in the house.

54. Int. Did the said firm of J. R. Harris & Co., last aforesaid, become obligated to said First National Bank by any note or notes signed by them in making good such acceptances?

A. It is my impression they did.

55. Int. Who, if any one other than said firm, became obligated on such paper?

A. I don't know.

56. Int. Did not the said William Y. Williams sign such paper?

A. I don't now remember.

57. Int. Did you assist the said William Y. Williams in the matter of the keeping of the books of the firm of W. Y. Williams & Co., composed of William Y. Williams & W. B. Mann, in the year 1867, for any length of time?

434 A. I was there for two or three months attending to the shipping of goods, making out invoices of goods, and doing general work of that kind.

58. Int. Were you acquainted with the circumstances under which said last named copartnership was dissolved?

A. I was.

59. Int. State them.

A. Mr. Mann got into trouble with government at his Hannibal factory, the government seizing his property there and his interest here, and selling him out.

60. Int. Had the said William B. Mann, at the time of such dissolution, drawn out of the said concern less or more than his interest therein?

A. I heard Mr. Williams tell him in the office that he had drawn out more than was due him.

61. Int. Did you assist said William Y. Williams in keeping the books of the firm of William Y. Williams & Co. in 1869?

A. I was principal bookkeeper myself in 1869.

62. Int. Who was the bookkeeper of J. R. Harris & Co.?

A. I was.

435 63. Int. Was the said Uri S. Penfield cashier of the First National Bank of Quincy, Ills., at the time of the purchase of the tobacco mentioned by you in this deposition from Jacob R. Harris and Uri S. Penfield?

A. Yes, sir.

Cross-examined by plaintiff's attorney.

64. Int. Please state if you are related to W. Y. Williams; and, if so, in what degree.

A. Brother-in-law.

65. Int. You say in your examination-in-chief that you was in partnership with W. Y. Williams & Robert N. Blackwood a part of the year of 1869, in the purchase of leaf tobacco and manufacturing the same in plug tobacco. Who was bookkeeper of that concern during the time you was so a partner?

A. I was.

66. Int. Have you the books of said copartnership now at your command?

A. I am not certain; I left them in the safe at Reading's store; they may be there and they may not be; I have not seen them for a long while.

436 67. Int. Do you know where said books are?

A. I do not, unless they are there now.

68. Int. When did you see them last?

A. Indeed I don't know, sir; I couldn't state when.

69. Int. At what time in the year did said firm, W. Y. Williams and Co., consisting of W. Y. Williams, Robert N. Blackwood, and George H. Simpson, commence business in the manufacture of tobacco?

A. I couldn't state just when we commenced. The partnership was formed in March or April.

70. Int. You say you were bookkeeper during that working season?

A. I was.

71. Int. Did you keep a stock-book of the amount of capital paid in by each partner?

A. I kept no stock-book; I kept a le'ger, cash-book, and journal, on which all the transactions of the business was kept, each member having an individual account opened to him in which he was credited by all paid in and charged with all drawn out.

72. Int. Can't you produce that book or those books here and
437 let us see how much money was paid into the capital stock or to the working stock by each partner for that year?

A. I cannot; I have neither keys to the safe nor to the building.

73. Int. Then can you state from memory how much money was paid in by each or by any one member into the capital stock for that year; I mean the working season of 1869?

A. I put in between three and four thousand dollars into the concern; Mr. Blackwood put in about three thousand, and my impression is that Mr. Williams put in during the season six thousand or over.

74. Int. How much money was paid in by each partner at the date you commenced business?

A. I couldn't say; I would say this, that in the month of May I put in over three thousand dollars. Williams and Blackwood had put in money before that, but just what date couldn't say.

75. Int. How much money had Williams and Blackwood put in before that time?

Ans. Enough to run the business up that time.

76. Int. From what source did the money come that you put in?

Ans. I made it out of pork.

438 77. Int. Where did you keep that money up to the time you put it in the tobacco business? In what bank or where?

Ans. It was in the bank here; I don't know whether it was to my credit or not; we had just got settled up in our pork business; Dr. Kay and Thos. Pryce were running the bank, and were my partners in the pork business; Mr. Pryce kept the pork books.

78. Int. How much money did Robert N. Blackwood pay into the capital stock of said copartnership before it commenced business, in the spring of 1869?

Ans. I couldn't say.

79. Int. Did he pay in any money at all?

Ans. He paid in some money when he commenced business.

80. Int. I will ask you if W. Y. Williams paid into the capital stock any money or property, other than the machinery, up to the time you commenced business, in the spring of 1869?

Ans. He paid in money when he commenced work.

81. Int. You say the books were kept in Reading's safe. I will ask you if Judge Pryce does not *not* now have the key to the door of
439 said building and safe, and why it is that you cannot examine and produce said books here for inspection?

Ans. Because Judge Pryce is not here.

82. Int. Where is Judge Pryce?

Ans. I presume he is at home, or in town somewhere.

83. Int. You say in your examination-in-chief, on the admission of J. R. Harris as a partner that the style of the firm was changed to that of J. R. Harris and Co.?

Ans. It was.

84. Int. At what date was this new firm organized of J. R. Harris and Co., and who were the partners?

Ans. It was formed in the months of March *in* April, 1870, composed of J. R. Harris, R. N. Blackwood, W. Y. Williams, and myself.

85. Int. Who was the bookkeeper and cashier of that firm?

Ans. I was.

86. Int. Have you the books of that firm now in your possession or under your control?

Ans. The last I saw of them they were in Reading's safe. I suppose they are there yet.

87. Int. Is it in your power to produce them here before this inquiry?

Ans. If I had the keys I could do it.

440 88. Int. How much capital was paid in by the members of that firm to the capital stock before said firm commenced business?

Ans. My impression about three thousand dollars, in the way of leaf tobacco and material, which was equivalent to cash.

89. Int. Who was that paid in by?

Ans. It was paid in by W. Y. Williams & Co., the last preceding firm.

90. Int. How much was paid in by J. R. Harris on his admission to the firm?

Ans. Mr. Harris, I don't think, paid in anything before he commenced work.

91. Int. Did J. R. Harris pay into said firm at any time anything except the machinery he put into the concern on his admission as a partner?

Ans. Yes; he did pay in money—not much—seven or eight hundred dollars.

92. Int. At what date was this copartnership of J. R. Harris & Co. dissolved—what date?

Ans. It was some time in August. Couldn't say exactly the date.

93. Int. How was it dissolved?

Ans. By Williams and Blackwood going out.

441 94. Int. Was there any notice published in any paper of the dissolution of that partnership?

Ans. I don't think there was.

95. Int. In your examination-in-chief you said you were acquainted with the financial condition of William Y. Williams during the period of time between March the 1st, 1869, and the spring of 1870; that you considered him solvent. Do you, of your own knowledge, know what his indebtedness was during that period of time?

Ans. I didn't know of his owning anything. He always had money to pay for what he bought.

96. Int. Then you don't know whether he was solvent during that period of time or not?

Ans. If he had been owing anything my intercourse with him in business was such I should have been apt to have known it.

97. Int. Do you know, at that time, during that period, how much borrowed money he owed, how much money he was endorser for, for other parties?

Ans. I don't know that he was endorser for any parties during
442 that year, and don't know of any borrowed money unless it would be money obtained on acceptances of the firm.

98. Int. You have stated that you was bookkeeper of the said firm for the year 1869; now please state how much money was drawn out of said business by said Williams during said year, and paid by him for improving the farm he now resides on.

A. I don't think it was a great deal; the amount I couldn't state.

99. Int. Would your said books for that year not show the exact amount?

A. No, sir; because it would be like cash drawn out for anything else; it would be so much cash charged to him.

100. Int. Can you state, in the absence of your books, how much money W. Y. Williams drew out of said business for the year 1869?

A. I could not.

101. Int. I will ask you if the amount he drew from said business during said year was as much as the amount of capital cash paid in by him in said copartnership?

443 A. No, it wasn't; the most that he drew out was to pay for stock in the Union Bank of Quincy, Illinois. I think it was five thousand dollars stock we had there.

102. Int. How much cash did he pay in on that stock?

A. I don't know.

103. Int. You say in your examination-in-chief that said Williams owned one-half interest in the real estate. Do I understand you to say by that the "Globe Tobacco Works"?

A. Yes, sir.

104. Int. What was the half interest in said "tobacco works;" that is, the real estate?

A. I expect half of the real was worth something like about four thousand dollars.

105. Int. Do you know what Williams and Mann paid for that factory a year and a half previous to that time?

A. No, sir; I do not.

106. Int. I will ask you if, during the year 1869, *if* W. Y. Williams did not draw out of said business more money to pay for improvements on his farm, and to pay on the stock he subscribed to the capital stock

444 of the Union Bank of Quincy, Ills., than he had paid in, or afterwards during the year paid in, to said business?

A. I think not.

107. Int. How much less than he paid in did he draw out?

A. I couldn't say.

108. Int. You say in your examination-in-chief that Jacob R. Harris in the spring of 1870 bought one-third interest in the "Globe Tobacco Works" and machinery and paid for it with other machinery. What was the valuation put on that property at that time, if you remember?

A. I don't remember what valuation they put on it.

109. Int. You say that at the time of organizing this new company of J. R. Harris & Co., I mean the company organized in March or April, 1870, that said Harris paid into said concern no money other than the machinery by him furnished?

A. No; don't think he did.

110. Int. I will ask you now if the said firm of J. R. Harris & Co., consisting of J. R. Harris, W. Y. Williams, Robert N. Black-

445 wood, and George H. Simpson, did not at different times and on different occasions during the spring, commencing say in April, 1870, up to September 1st, borrow large sums of money at different times of the 1st National Bank of Quincy, Illinois; as much, say, as thirty thousand dollars?

A. If you include the paper we had discounted, that is the acceptances known as "tobacco paper," we had discounted a good deal more than that.

111. Int. How much did you come out behind with said bank, for which your firm gave joint notes?

A. I think the whole paper against the concern for about twenty thousand dollars.

112. Int. How many notes, if you recollect, were they?

A. I don't know exactly, but I think four or five.

113. Int. Do you remember, or do you not, that the judgments rendered on those notes, in the Lewis County circuit court, that the first
446 judgment was for some four thousand and some hundred dollars; the judgment on the 2d note was for upwards of eighteen thousand dollars; that the judgment on the 3d and 4th notes was for upwards of four thousand dollars, all of said judgments being against the said members of your said firm, J. R. Harris & Co., to wit, Jacob R. Harris, W. Y. Williams, Robert N. Blackwood, and John Sisler; that the suit was dismissed as to Dr. Hay, who was then dead, and no administrator, and dismissed as to yourself?

A. I remember that the First National Bank got judgments then, but as to the amounts don't know, and I remember that the suits as to Dr. Hay and myself were dismissed.

114. Int. Was the judgments for near the amounts stated in last interrogatory?

A. I think it would be near that, including interest.

115. Int. I will ask you if the suit was not dismissed as to you on account of your having obtained a discharge in bankruptcy?

A. It was.

447 Not being able to complete the taking of said deposition by reason that the witnesses have not completed their testimony, I adjourned the further taking of the same till morrow, then to be continued at the same place & between the same hour mentioned in the annexed stipulations.

G. N. CONNELL,
Notary Public.

Pursuant to adjournment, as above stated, on the 21st day of December, 1877, between the hour of 8 o'clock in the forenoon & 6 o'clock in the afternoon, at office of G. N. Connell, as aforesaid, I continued the taking of said depositions as follow, to wit:

George H. Simpson, in continuation of his deposition commenced yesterday, on his oath further says:

116. Int. These judgments rendered in the Lewis Co. circuit court, Missouri, a copy of which is attached to the amended bill filed in this cause in the United States circuit court at St. Louis, has your firm of J. R. Harris & Co., or any member thereof, paid said judgments, or any part thereof?

Ans. Not to my knowledge.

448 117. Int. I will ask you if these debts referred to here, due the 1st Nat. Bank of Quincy Ills., at the date that Joseph A. Hay and John Sisler bought out the interest of W. Y. Williams & Robert N. Blackwood, from your said firm, as aforesaid?

118. *Int.* (This question is objected to by counsel for defendants William Y. & Sarah C. Williams, for the reason that it assumes that the said J. A. Hay & John Sisler purchased their interest in said business *form* William Y. Williams & Robert N. Blackwood, which is not in proof.)

Ans. There was a part of them due, although the paper had been changed around—the paper had been renewed.

119. Int. What part?

Ans. I couldn't state what part.

120. Int. I will ask you if all these debt' hereinbefore described were not the debts contracted and owing by W. Y. Williams & Co. to

to the First Nat. Bank of Quincy, Ills., before said Williams and Blackwood sold out their interest in the tobacco business to Joseph A. Hay and John Sisler?

449 121. *Int.* (This question is objected to by counsel for defendants Y. William & Sarah C. Williams, because it assumes that William Y. Williams & Robert N. Blackwood sold out their interest in said concern to J. A. Hay & John Sisler, which is not the fact according to the proof.)

Ans. W. Y. Williams & Co. didn't owe the First National Bank anything.

121. Int. Are you sure the firm of W. Y. Williams & Co. did not owe the First National Bank of Quincy, Ills., any money at the date they sold out their said interest?

Ans. W. Y. Williams & Co. owed the First National Bank nothing; not to my knowledge.

122. Int. At the date of the sale of W. Y. Williams & R. N. Blackwood to J. R. Harris were the debts, a copy of each judgment, filed with the amended bill in the United States circuit court at Saint Louis, then due the First National Bank of Quincy, Ills.?

Ans. It was not.

123. Int. Then, please state which one of said notes were not
450 then due at the date of said sale, & if not due at that date, when did they become due?

(This question is objected to by counsel for defendants Sarah C. & William Y. Williams, because the notes concerning which the witness is interrogated, and the same notes upon which the said several ju'gments were obtained, were not executed until the following dates: June 19th, 1871; June 3d, 1871; July 3rd, 1871; & July 19th, 1871; and the question is objected to for the reason that counsel propounding the same does not specify therein to what note or notes he refers.)

Ans. I don't know anything about the dates of the notes being renewed after that time.

124. Int. I will ask you if the indebtedness referred to due from the firm of J. R. Harris & Co. to the first National Bank of Quincy, Ills., was not all contracted prior to the date of the latter part of August, 1870, when said J. R. Harris bought out the interest of W. Y. Williams & R. N. Blackwood in said tobacco business?

Ans. No, sir.

451 125. Int. State, then, what part, as near as you now remember in the absence of your books, was not so contracted at that date.

Ans. I don't think that I could approximate very closely to it, the time being so long since the transaction, & not having any reference to the books.

126. Int. Was there any part of said indebtedness contracted after the date of the sale of W. Y. Williams & Robert N. Blackwood to J. R. Harris? Will you state now in the absence of your books that there was; &, if so, what part or what sum of money?

Ans. Part of that indebtedness was contracted after the date of the sale; what that amount was I don't now remember.

127. Int. How often, if you remember, were the notes referred to renewed, and for what length of time was said renewals?

Ans. I don't now remember.

128. Int. I will ask you if you were present in the circuit court of Lewis County, Missouri, when the judgments were obtained?

A. I remember of being present when judgments were ob-

452 tained on some of the notes; whether on all or not I don't now remember.

129. Int. I will ask you if the objections made here by the attorney for defendants W. Y. and Sarah C. Williams are not, in substance, the defence that was made in said court by the pleadings in said causes?

(This question is objected to by counsel for defendants Sarah C. Williams and W. Y. Williams, for the reason that the witness is interrogated concerning matter entirely immaterial to the issue in this case, and because the pleadings themselves filed in this cause are the best evidence of what they contain.)

A. My impression now is that they are not.

130. Int. Please state in what do they differ.

Ans. Well, I can't state now what the pleadings were in that case.

131. Int. You stated in your examination-in-chief that soon after the copartnership of J. R. Harris & Co. was formed, in the spring of
453 1870, that said firm purchased leaf-tobacco of Jacob R. Harris, which Harris said belonged to him and Uri S. Penfield, to the value of eleven or twelve thousand dollars. State whether the amount was due the First National Bank when Williams and Blackwood sold out to Harris.

A. I think that amount was due the First National Bank of Quincy at that time; there might have been some payments made on the notes.

132. Int. Now what other sum or sums of money due the First National Bank of Quincy, Illinois, from said firm of J. R. Harris & Co., at the date of said sale of W. Y. Williams and R. W. Blackwood? Can you state, in the absence of your books, the correct sum?

A. I cannot; we were giving the bank "tobacco paper" all the time, which was passed to our credit, and we drew money as required in our business.

133. Int. Can you approximate anywhere near the sum due said bank at the above sale?

A. I cannot.

134. Int. You have said, in your examination-in-chief, that at
454 the date of the sale of the said J. R. Harris to Hay and Sisler that said Hay and Sisler were to take the place of Williams and Blackwood; they were to assume and pay all liabilities of the said Williams and Blackwood then due on said business. I will ask you now to state if said Hay and Sisler did assume and pay the indebtedness of said Williams and Blackwood to the First National Bank of Quincy, Illinois.

Ans. They paid as far as the assets of the firm went.

135. Int. What firm do you allude to?

Ans. J. R. Harris & Co.

136. Int. Then, if I understand you correctly, the firm of J. R. Harris & Co. had not sufficient assets at the date of said sale to pay their indebtedness. Am I correct in this?

Ans. I think that at the day of sale J. R. Harris & Co.'s assets would have about paid their debts. We had not met with any losses up to that time.

137. Int. You say, in your examination-in-chief, that the consideration moving between the said Williams & Blackwood and J. R. Harris for the sale of their interest in said property to him, said Harris, that he, Harris, was to assume all the liabilities said Williams & Blackwood had incurred in said tobacco business, and that they, said Williams & Blackwood, were to work the balance of the season.

455 Now what do you mean by the expression "they were to work the balance of the season"?

Ans. That they were to continue work the balance of the year, in assisting in manufacturing and shipping, and filling their several places as in the beginning.

138. Int. What do you mean by the "balance of the year"?

Ans. I mean the remainder of the unexpired year.

139. Int. You state in your examination-in-chief that after the dissolution of the firm of J. R. Harris & Co., of which Williams was a member, on the renewal of paper new securities appeared on such paper. Now please state fully why & how it was that the names of J. A. Hay and John Sisler appeared thereon as new securities.

Ans. At the instance of Mr. Penfield.

140. Int. Who is Mr. Penfield, & what position does he hold in the First National Bank of Quincy, Ills.?

Ans. Mr. Penfield is cashier of the First Nat. Bank of Quincy, Ills. & was acting for that bank.

141. Int. Do you know why it was that their names appeared on that paper as new securities?

Ans. Mr. Penfield said he wanted them.

142. Int. Do you not know of your own knowledge that J. A. Hay & John Sisler & J. R. Harris made application to said bank to take up the indebtedness of W. Y. Williams & R. N. Blackwood, & execute the note or notes of the new firm of J. R. Harris & Co., consisting of J. R. Harris, George H. Simpson, J. A. Hay, & John Sisler, & giving the notes of the new firm in place of the same? This application was declined by said bank, and that that is the reason that the names of J. A. Hay & John Sisler appeared on said paper?

Ans. To my knowledge no such proposition was ever made.

456 143. Int. Then, please state why it was and at whose instance the said names of J. A. Hay & John Sisler appears in said indebtedness.

Ans. At the instance of Mr. U. S. Penfield, cashier of the First National Bank.

144. Int. You state in your examination-in-chief that the firm of J. R. Harris & Co., after Williams & Blackwood had sold out their interest—that the firm of J. R. Harris, J. A. Hay, John Sisler, & yourself met with heavy losses, sustained in the sale of tobacco to two Jew firms in the city of Chicago, and other small losses sustained directly thereafter. Now please state what, if anything, that had to do with the liabilities before that date contracted by W. Y. Williams & R. N. Blackwood.

Ans. The goods sold to the Jews aforesaid were manufactured prior to the sale, in part; that is, a part of the goods was manufactured prior to the sale of Williams and Blackwood to Harris, and a part manufact-

145. *Ans.* In what way or how, if any, did that affect the interest or ured from stock on hand was sold to them afterwards.
liability of Williams and Blackwood, if they had previously sold out their entire interest to J. R. Harris?

Ans. I don't know that it affected their interest any at all.

457 146. Int. You stated in your examination-in-chief that you assisted W. Y. Williams in keeping the books of the firm of W. Y. Williams & Co., said firm composed of Williams & Mann, in the year 1867, attending to the shipments of goods, making out invoices, and work of that kind. Now please state if you have those books in your possession or under your control.

(This question is objected to by counsel for defendants William T. &

Sarah C. Williams, because the same wae answered by this witness in his present cross-examination at one or more times, & nothing can be gained in having him reiterate.)

Ans. I don't think that in my testimony I stated that I assisted Mr. Williams in keeping books; my statement was that I attended to shipping, making out invoices, and such work. I never had charge of the books, and know nothing of them now.

147. Int. You state here in the interrogatory preceding that you were acquainted with the circumstances under which said copartnership was dissolved; that Mann got into trouble with the government over the Hannibal factory; that the government seized his interest there
458 and his interest here. Please state what you know of the facts in that case, fully.

Ans. I heard the United States assessor and the United States collector say that Mr. Mann was defaulter to the government for a considerable sum of money. On that the collector seized his factory in Hannibal and his interest in the factory here, and sold them out.

148. Int. State now, if you know, where he was defaulter, and on what account.

Ans. I don't know that he was defaulter, only from what I heard.

149. Int. You say that you talked with the United States collector and the United States assessor in regard to his default. Where did they say his default was?

(Objected to as eliciting hearsay testimony.)

Ans. At Hannibal, in not paying revenue on manufactured tobacco.

150. Int. What date and what year did this occur?

Ans. I think it was the latter part of 1867. It might have been in 1868.

459 151. Int. I will ask you if there was not great risk and danger, in those dark days, of a person or firm manufacturing and selling plug tobacco under the machinery of the government then existing?

Ans. A good many factories experienced trouble from not keeping their books as required by law; others by trying to evade the tax.

152. Int. I will ask you if there was not great danger at that date of any person or firm, however particular, sustaining losses by reason of said restrictions?

Ans. I think not, except where some of the revenue agents got after him and wanted money.

153. Int. You say in your examination in chief that you was personally acquainted with W. Y. Williams in the years 1866, 1867, 1868, 1869, and 1870. Did you ever have any talk or conversation with W. Y. Williams during the year of 1868 about his having or causing the land he bought of James H. Skinner—the reason for his having the deed made to his wife, Sarah C. Williams? If yea, state what that conversation was.

460 Ans. I don't remember ever having any conversation with him about that matter in that year.

154. Int. Did you ever at any other time have any conversation with him in regard to that matter, or ever hear him say anything in regard to it? If so, state at what date, as near as you can recollect, and what was said.

Ans. I think at the time of purchase, or at the time of the deed being made in regard to the twelve acres he had purchased, of having the deed made to his wife. That was the first purchase he made. I don't know just what was said about it now. We were talking over matters and

things, and he just said that he had it deeded to his wife. This is all I remember hearing on that question.

155. Int. What date was this?

Ans. I think it was the spring of 1868.

156. Int. Did he not in that conversation assign any reason or what caused him to have the deed made to Sarah C. Williams?

Ans. I don't remember now that he did.

461 157. Int. Was you connected in any manner in the year 1866 with the firm engaged in the tobacco business composed of W. Y. Williams, Wilsen Wakefield, and Moore?

Ans. I was not.

158. Int. Were you connected in any manner with the firm of W. Y. Williams and Robert N. Blackwood in the year 1867 in the manufacture of plug tobacco?

Ans. I was not.

159. Int. In the year 1870, in the month of April, I believe, yourself, W. Y. Williams, and R. N. Blackwood renewed or made a note to the La Grange Savings Bank for the sum of sixteen hundred and thirty-five dollars and $\frac{25}{100}$. Do you remember what this note was executed for? If so, please state.

Ans. Well, it was some money I owed the bank—an overdraft, I believe—and a part of it was a note I had to assume of Olds and Cashman. I think Olds was principal and Cashman and I were endorsers. My recollection of the matter is not very distinct, but think it was as above stated.

160. Int. I will ask you if said note was not a renewal note in part—say near one thousand dollars—executed by you, W. Y. Williams, and Robert N. Blackwood to the La Grange Savings Bank, of date

462 1867, and renewed from time to time, and the balance on overdraft for near, including the former note, the amount of $1,635.25 *dollars?*

Ans. I think not. I feel certain that I owed the bank nothing in the spring of 1869, when I drew out over three thousand dollars.

161. Int. You had a note there, or divided up a note, for which you and others, some time in the spring of 1870 executed your note, with divers endorsers on it, for three thousand seven hundred thirty-two dollars and $\frac{25}{100}$. Do you remember who your endorsers on that note were? If so, state.

Ans. I think that note was given in the latter part of that year. I A. Hay, know what the note was given for. I think John S. Motter, J. and W. Y. Williams were my endorsers.

162. Int. Please state, as near as you can, the date that money was borrowed.

Ans. That money was got by Hay, Simpsen and Co. the previous winter for the purpose of packing pork, from the La Grange Savings Bank, amounting to some ten thousand dollars or more, and this

463 part was one-third of the sum borrowed after our settlement of the pork business.

163. Int. I will ask you if either of these sums of money have been paid by you or any other person, or any part thereof, to the La Grange Savings Bank; if so, by whom, how much, and when paid?

Ans. I don't know of anything being paid on them.

164. Int. You say in your examination-in-chief that you were the bookkeeper, I believe, and cashier of the firm W. Y. Williams & Co. during the year of 1869. Am I correct in this?

Ans. You are.

165. Int. Do you now know or remember, in the absence of your books, how much, or what sum of money, said firm borrowed of the La Grange Savings Bank during said year?

Ans. I don't think that we had any accommodation paper there. We had considerable tobacco paper discounted at that bank. When the season closed, our account was closed at that bank, owing it nothing.

166. Int. Are you sure you had none of your firm paper, sixty
464 and ninety days' time, discounted at said bank during said year of 1869?

Ans. I don't think we had, except our "tobacco paper," which was discounted at sixty and ninety days' time.

167. Int. Do you know that W. Y. Williams filed voluntarily a petition in the United States district court for the eastern district of Missouri asking for a discharge from his indebtedness in bankruptcy? If yea, at what date was it filed, as near as you can recollect?

Ans. No, sir; I don't know, except by hearsay.

168. Int. Are you satisfied, from hearsay evidence, from what you was told, and what you heard, that he did file such petition?

Ans. Yes; I should think so.

Re direct examination by defendant's attorney:

169. Int. In your examination by Judge Alverson you say that the firm of J. R. Harris & Co. became indebted to the First National
465 Bank of Quincy in the sum of twenty thousand dollars, or thereabouts. Please state whether the total amount of said indebtedness accrued against said firm while the said William Y. Williams was a member thereof, or was some of said indebtedness incurred after the retirement of the said William Y. Williams and Robert N. Blackwood.

Ans. A part of it was contracted before, and a part after.

170. Int. In your cross-examination you say that part of the goods sold to the Chicago Jew firms were manufactured prior to the retirement of said Williams and Blackwood. Are you certain that this is true?

Ans. My impression is that part of the goods were manufactured before the retirement of Williams and Blackwood.

171. Int. You were asked a few moments ago concerning two notes given by yourself and others to the La Grange Savings Bank. Are those the same two notes upon which judgment was obtained in
466 the circuit court of Lewis County, Missouri, in the month of May, 1873?

Ans. I think so.

172. Int. Did the said La Grange Savings Bank hold any other notes against you, either alone or jointly with others, except those upon which judgment was obtained as aforesaid, at that time?

Ans. I think it was on a five-hundred dollar note.

And further deponent saith not.

GEORGE H. SIMPSON.

Subscribed and sworn to before me on the day, at the place, and between the hours mentioned in annexed stipulations.

G. W. CONNELL,
Notary Public.

EXHIBIT B.—(Copy.)

Know all men by these presents, that James H. Skinner & Mattie C. Skinner, his wife, of the city of La Grange, of the county of Lewis, in the State of Missouri, have this day, for and in consideration of the sum of four thousand eight hundred dollars, to the said James H. Skinner & Mattie C. Skinner in hand paid by Sarah C. Williams, of city of La Grange, of the county of Lewis, in the State of Missouri, granted, bargained, and sold, and by these presents do grant, bargain, & sell unto the said Sarah
467 C. Williams the following described tracts or parcels of land situate in the county of Lewis, in the State of Missouri, that is to say: Commencing at the southwest corner of the southeast quarter of section (25) twenty five, township (61) sixty-one, range (6) six west, at letter D on county surveyor's plat No. 124, running north thirty-one & $\frac{50}{100}$ chains to a stone, letter C; thence east 17 $\frac{42}{100}$ chains to a stone, letter M; thence south to a stone, letter N, 16 $\frac{75}{100}$ chains; thence west to a stone, 9 & $\frac{94}{100}$ chains; thence south to a stone 14 $\frac{14}{100}$ chains; thence west to the place of commencement 8 $\frac{13}{100}$ chains, containing 42 acres, more or less; to have & to hold the premises hereby conveyed, with all the rights, privileges, & appurtenances thereto belonging, or in any wise appertaining unto the said Sarah C. Williams & her heirs & assigns forever; the said James H. Skinner & Mattie C. Skinner, parties of the first part, hereby covenanting to & with the said Sarah C. Williams, party of the second part, her heirs and assigns, for their heirs, executors, & administrators, to warrant & defend the title to the premises hereby conveyed against the lawful claim of any person whatsoever.

In witness whereof we have hereunto subscribed our names and affixed our seals this 13th day of December, A. D. 1871.

This deed is made to correct a deed made on the 11th day of February, 1868, & recorded on the 24th day of February, 1868, in vol-
468 ume 3, pages 391, 392, 393, in circuit clerk's office, in Lewis County, Missouri.

(Signed) JAMES H. SKINNER. [L. S.]
" MATTIE C. SKINNER. [L. S.]

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that James H. Skinner & Mattie C. Skinner, his wife, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the foregoing deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act & deed for the uses & purposes therein contained; and the said Mattie C. Skinner, being by me first made acquainted with the contents of said deed, acknowledged on examination apart from her said husband that she executed the same & relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand & notarial seal, at my office, in La Grange, this 13th day of December, A. D. 1871.

(Signed) THOMAS PRYCE, *Notary Public.* { THOMAS PRYCE, LA GRANGE, LEWIS COUNTY, MO., NOTARY PUBLIC. }

[U. S. int. rev. stamp, for five dollars, affixed & cancelled: J. H. S., Dec'r 13, 1871.]

469 STATE OF MISSOURI,
County of Lewis, ss:

In the recorder's office.

I, T. B. Jeffries, clerk of the circuit court & ex officio recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the certificate thereon, was filed for record in said office, on the 6th day of January, 1872, and that the same is duly recorded in said office, in book, vol. 11, for recording deeds, at pages 329, 330, & 331.

In witness whereof I have hereto set my hand and affixed the seal of said court. Done at office, at Monticello, this 6th day of January, 1872.

T. B. JEFFRIES,
Recorder.

Seal of circuit court, Lewis Co., Mo. attached.

General warranty deed.

This indenture, made on the eleventh day of February, A. D. one thousand eight hundred and sixty eight, by and between James H. Skinner and Mattie C. Skinner, of La Grange, Lewis County, Missouri, parties of the first part, and Sarah C. Williams, of the county of Lewis, in the State of Missouri, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the
470 sum of four thousand eight hundred dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm unto the said party of the second part, her heirs and assigns, the following described lots, tracts, or parcels of land, lying, being, and situate in the county of Lewis and State of Missouri, to wit: All of commencing at southwest corner of section (25) twenty-five, township sixty one (61), range (6) west, at letter D on county surveyor's plat No. 124, running north 31 $\frac{62}{100}$ chains to a stone, letter C; thence east 17 $\frac{32}{100}$ chains to a stone, letter M; thence south to a stone, letter N, 16 $\frac{29}{100}$ chains; thence west to a stone 9 $\frac{54}{100}$ chains; thence south to a stone 14 $\frac{76}{100}$ chains; thence west to a stone, the place of commencement, 8 $\frac{18}{100}$ chains, containing forty two acres, more or less; to have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging
471 or in any wise appertaining, unto the said party of the second part, and unto her heirs and assigns forever; the said James H. Skinner and Mattie C. Skinner hereby covenanting that they lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any encumbrances done or suffered by them or those under whom they claim; and that they will warrant and defend the title to the said premises unto the said party of the second part, and unto her heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES H. SKINNER. [SEAL.]
MATTIE C. SKINNER. [SEAL.]

Signed, sealed, and delivered in presence of us.

[Five-dollar inter revenue stamp affixed and cancelled: J. H. S. Feb. 11th, 1868.]

STATE OF MISSOURI,
County of Lewis, ss:

Be it remembered that on this 11th day of February, A. D. 1868, before the undersigned, a notary public within and for the county of Lewis and State of Missouri, personally came James H. Skinner and
472 Mattie C. Skinner, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purpose therein mentioned; and the said Mattie C. Skinner, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband, acknowledged that she executed the same, and relinquished her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in La Grange, the day and year first above written.

THOMAS PRYCE, LA GRANGE, LEWIS CO., MO., NOTARY PUBLIC. THOMAS PRYCE, *Notary Public.*

EXHIBIT A.—(Copy.)

General warranty deed. From James H. Skinner to Sarah C. Williams. Filed for record this day.

STATE OF MISSOURI,
County of Lewis, ss:

The recorder's office.

I, Thomas B. Jefferies, clerk of the circuit court and ex officio recorder of said county, do hereby certify that within instrument of writing was on the 24th d y of February, A. D. 1868, duly filed for record in this office, and is duly recorded in the records of this office in book vol. 3, at pages 391, 392, 393.

473 In witness whereof I have hereunto set my hand and affixed the seal of said circuit court this 24 day of February, A. D. 1868.

SEAL OF CIRCUIT COURT, LEWIS CO., MO. THOS. B. JEFFRIES, *Clerk and Recorder.*
Per P. C. AGER, *Deputy.*

474, 475 *Opinion of the court.*

And the court delivered an opinion which is in words and figures following, to wit:

PENFIELD ET. AL. *vs.* WILLIAMS ET. AL. } In equity.

The purpose of the bill is in its general scope to subject the property in question to the payment of Williams' debts. In Sept., 1867, a bond for a deed was given to Williams, and early next year a deed, by his direction, was made to his wife. At that time the property was unimproved, but during the year large expenditures towards the improve-

ment of the same were made out of his individual funds; and from time to time thereafter, down to 1878, small improvements were made in the same way.

As a starting point in this case, the rules as to voluntary conveyances should be ascertained:

1st. As to existing creditors; & 2d, as to subsequent creditors.

As to the first proposition, it may be stated that the whole subject matter, under very complicated circumstances, underwent full review in the U. S. Sup. Court here and then on appeal in the U. S. supreme court (2 Dillon, 56, Smith vs. Kane), finally considered at great length and affirmed in 20 Wall., 85, Kane vs. Smith.

The true rule as thus inferred is in the language of Mr. Justice Field, as follows:

"The ancient rule that a voluntary post-nuptial settlement can be sustained if there was some indebtedness existing was soon relaxed, and the rule generally adopted in this country at the present time will uphold it, if it be reasonable, not disproportionate to the husband's means, taking into view his future and situation, and clear of any intent, actual or constructive, to defraud creditors." In Smith et al. vs. Dodge, 2 Otto, 561, Mr. Justice Swayne says concurring, a mixed case as to existing and subsequent creditors: "The law of this case is too well settled to admit of doubt. In order to uphold a settlement made by a husband upon his wife, it must be founded in fairness existing creditors or creditors whose rights are acquired shortly to supervene or to those whose rights may and do supervene, the settlor proposing to leave the margin of business risk which he is about to engage upon where natural or honestly adopting its means subject to the chance of those adverse results to which all business enterprises are liable. Fraud a delay a question of fact to be determined by the court upon a careful scrutiny of the evidence before it."

In Reese vs. Scruggs, 2 Otto, 23, the right of assignee in bankruptcy is decided, where conveyance was made about one year before proceedings in bankruptcy were had, the consideration for the same having come from the separate estate of the property unlawfully improved by the individual funds. That case turned the facts presented, and gives no special assistance in the case in the position under consideration. The U. S. Supreme Court from the begin[illegible] that, if the original conveyance were valid, made in the effort to the husband's appropriation to its improvement out of his private funds of [illegible] money, thereby [illegible] the original [illegible] to [illegible]

The [illegible] the U. S. Supreme Court in Kane vs. Smith, [illegible] to include the rule to be followed as to existing and subsequent [illegible]

It was therefore [illegible] that [illegible] unsubstantial [illegible] and of the estate make a reasonable settlement on the wife [illegible] [illegible] to [illegible] maintaining obligations and [illegible] [illegible] of [illegible] as subsequent creditors cannot be interfered with by [illegible] of the facts presented.

[illegible] engaged in business which [illegible] provisions [illegible] provide for his wife, still retaining [illegible] upon it with right to use [illegible] [illegible] [illegible] [illegible] should. If, on the other hand, [illegible] [illegible] [illegible] [illegible]

478 bark in business, cannot before doing so settle on his wife what is reasonable under the circumstances in order to avoid hazarding his whole fortune by new enterprises.

If he conveys to the wife, and causes his conveyance to be properly recorded, a reasonable portion of his estate, subsequent creditors are legally informed that the property so conveyed is not his, and consequently not liable for his adventures. If creditors existing at the time of the conveyance are paid, they can have no cause of complaint and no right of action. In such cases no real difficulty can occur. In mixed cases, like the present, a sharp analysis is needed. The evidence shows that the settlement made on the wife was at the time reasonable, but that the husband has not since paid off then existing debts in their entirety, although they have been greatly reduced.

It further appears that out of his hazardous business he proceeded to improve the property mentioned, from which expenditures nearly the whole value of the property is derived. If existing debts had been fully paid thereafter, the case might have had another aspect, yet not entirely free from rigid scrutiny. If, for instances he had made voluntary conveyance leaving some existing debts unsatisfied, and simultaneously embarked in what he knew was a hazardous enterprise, and out of the funds invested in that hazardous enterprise paid said prior debts, the creditors whose demands originated in the subsequent business would have the right to follow those funds.

Out of what was the prior indebtedness paid? If paid out of funds reserved from the hazards of subsequent business, subsequent creditors could not complain, but if paid out of funds not so reserved,

479 then their funds were used which they have a right to have appropriated to the payment of their demands. It certainly will not be contended that a solvent person can settle on his wife a certain amount of wild and unimproved land of little value, then engage in a hazardous business, out of the proceeds of which during its fluctuations (new obligations occurring) he can erect on said land very expensive structures, and that the said land so settled upon the wife, together with the enhanced value from such improvements, are to be treated as her property, free from all demands of the creditors whose money made the improvements. Rightly considered will without reference to technical phraseology, the rules of law may be stated in plain terms, so that they will commend themselves to the common sense of right and justice. Thus, a husband may settle on his wife a reasonable portion of his estate. although he may at the time have some existing obligations outstanding. He must reserve sufficient to meet those outstanding obligations, not by a narrow margin, leaving his creditors to run the chances of the margin, but he must have adequate resources for the purpose and not so divert them as cause loss to existing creditors.

Primarily he ought to pay his debts, and then, owing nothing, he would be at liberty to dispose of his own as he pleases. But if, without discharging existing debts, he makes a voluntary conveyance of property unpaid for, and afterwards pays for the same, the rights of no subsequent creditors intervening, there will be no one wronged.

If, on the other hand, the rights of subsequent creditors do intervene, and out of funds justly applicable to the payment of their demands he pays the purchase money for the property settled, and in addition thereto continues to appropriate the funds of his subsequent

480 business to enhance the value of said property for his wife's benefit, the latter creditors cannot be deprived of all interest in the

estate built up by means justly applicable to the payment of their demands.

There is no difficulty where the settlement is made and existing debts are paid before new debts are incurred, for then there is no one who has a right to complain, unless said settlement, as a matter of fact, is contrived in fraud as to subsequent creditors.

When voluntary settlement is made, with debts outstanding which are paid out of the husband's surplus estate at the time, on other rights intervening, no one is wronged thereby. On the other hand, even though there is a surplus estate which is to be embarked in hazardous business, existing debts being unpaid, and out of that surplus estate so employed the prior indebtedness is paid, shall the money taken from the hazardous business to pay the sum due on the prior settlement be thus placed beyond the reach of the subsequent creditors? Shall the money applicable to the payment of his demands be used, not to pay what is due by him, but to make good a voluntary settlement not perfected? In othes words, shall the debtor take from his subsequent enterprises the funds embarked therein, which ought to be for the joint benefit of debtor and creditor, and appropriate the same for his wife's advantage at the expense of the creditor?

The rules of law are thus reducible to elemental propositions, whereby the rights of all are protected. The case now before the court must be determined in the light of the foregoing propositions.

481 From the evidence it is doubtful whether the deed in 1868 to the wife was made out of a surplus estate, that is, what was the pecuniary condition of Williams at the time. His prior homestead (so called) did not stand in his name, nor in the name of his wife, but in the name of one Peake. He caused that property to be conveyed by Peake directly to Skinner in part payment for the property in dispute, and paid in addition therefor $900 cash, and $900 a short time thereafter. He caused the deed by Skinner to be made directly to his wife, for the avowed reason that his business was hazardous and that he was then in doubt as to the extent of embarrassments caused by the conduct of his partner. At the time of the conveyance the property was unimproved, and he proceeded at once to expend large sums of money thereon, taken from his hazardous business, which thereafter turned out disastrously. His subsequent creditors procured judgments against him, caused this property, standing in the name of his wife, to be sold on execution, and became the purchasers thereof in the name of Penfield, to their use. The amount bid at said sale was small; yet that fact cannot be urged in behalf of a debtor who has sought to cover up his estate, whereby a bidder knows that his purchase involves protracted, and *and* it may be doubtful, litigation.

It is the consequence of his own attempted wrong that the property has yielded less than it would have done if he had not involved it in a tangled net of fraud.

A decree will be entered accordingly.

482, 483 *Stipulation as to separate answer of def't La Grange Savings Bank.*

In U. S. cir. c't for E. dist. Mo.

PENFIELD ET AL. *vs.* WILLIAMS ET AL. } No. 1002.

The separate answer of the defendant the La Grange Savings Bank

has been lost from the files of this case. It is hereby stipulated and agreed by and between the parties hereto that said answer expressly confessed the truth of the allegations of the complainants' amended bill, and further that no advantage shall be taken by either side in the Supreme Court of the United States on account of the absence of that answer from the record, as certified to that court from the circuit court, this stipulation to stand in lieu of said answer in said Supreme Court.

THOROUGHMAN & WARREN,
Sol's for Def'ts W. Y. and S. C. Williams.
DRYDEN & DRYDEN, WITH
H. L. & T. W. LIPSCOMB,
Sol's for Compl'ts.

484 (Indorsed:) 1002. Penfield et al. vs. Williams et al. Stipulation as to separate answer of La Grange Savings Bank, def't. Filed Oct. 14, 1878. M. M. Price, clk.

485 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true transcript of the record and proceedings had, together with a stipulation of parties in regard to the separate answer to amended bill of defendant La Grange Savings Bank, in case No. 1002, of Uri S. Penfield et al., plaintiff, against William Y. Williams et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 14th day of October, in the year of our Lord eighteen hundred and seventy eight.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By T. L. CRAWFORD.
Deputy.

(Indorsement on cover:) No. 158. William Y. Williams and Sarah C. Williams, appellants, vs. Uri S. Penfield and the First National Bank of Quincy, Illinois. E. Missouri C. C. U. S. Filed 4th February, 1879.

SUPREME COURT
FILED
SEP 19 1882
JAMES H. McKENNEY, CLERK

16-260

Supreme Court of the United States.

WM. Y. WILLIAMS AND SARAH C. WILLIAMS,
APPELLANTS,

vs.

URI S. PENFIELD AND THE FIRST NATIONAL BANK OF QUINCY, ILLINOIS, APPELLEES.

BRIEF FOR APPELLANTS.

EPPA HUNTON,
W. H. HATCH,
Attorneys for Appellants.

Judd & Detweiler, Printers.

Supreme Court of the United States.

WM. Y. WILLIAMS AND SARAH C. WILLIAMS,
APPELLANTS,

vs.

URI S. PENFIELD AND THE FIRST NATIONAL BANK OF QUINCY, ILLINOIS, APPELLEES.

BRIEF FOR APPELLANTS.

This suit was originally brought in the circuit court of Lewis county, in the State of Missouri, by Uri S. Penfield against the appellants, to set aside a deed as fraudulently made by James H. Skinner to Sarah C. Williams on the 11th day of February, 1868, and cause the property therein conveyed to be delivered to the plaintiff, (the appellees,) as trustee for the First National Bank of Quincy, Illinois, and the Savings Bank of Lagrange, Missouri, or that the same may be charged with the improvements placed upon the said property by the appellant, William Y. Williams.

The suit was, on the petition of Uri S. Penfield, removed to the circuit court of the United States for the eastern district of Missouri. On the 10th of December, 1877, in last mentioned court, the plaintiff, Penfield, filed an amended bill in which the First National Bank of Quincy was made a co-plaintiff, and the Lagrange Savings Bank a co-defendant. Answers were filed and depositions taken by both sides.

On the 8th day of June, 1878, the judge of said United States circuit court decreed "that all the right, title, interest,

and estate which said defendants, William Y. and Sarah C. Williams, on the 10th day of March, 1875, had in or to said land, which is described as follows * * * should, without any further conveyance from said defendants, or either of them, be vested, and accordingly is hereby vested, in said plaintiff, Penfield, in trust for his co-plaintiff and the said Lagrange Savings Bank," &c.

From this decree the said William Y. Williams and Sarah C. Williams appealed to this court. The pleadings and evidence establish the following facts:

Wm. Y. Williams was engaged in Lagrange, Missouri, conducting a general mercantile business up to the spring of 1866, and derived profits of a moderate character therefrom. At that time he engaged in the business of buying leaf tobacco, manufacturing it into plugs, and selling the manufactured tobacco. He continued in this business till August, 1870, with different partners. This business was prosperous, and large profits were derived from it. In August, 1870, he sold his entire interest in the firm of J. R. Harris & Co., of which he was a member. One of the stipulations in this sale was that the new firm of J. R. Harris & Co., of which he was not a member, was to pay the debts of the old firm, of which he was a member.

In the year 1867, the said William Y. Williams purchased the property in dispute for the sum of four thousand eight hundred dollars, and on the 11th of February, 1868, caused it to be conveyed to his wife, the said Sarah C. Williams, in consideration of the love and affection of the husband for the wife. In 1868 and 1869, he expended some six or seven thousand dollars in buildings on and improvement of said property in order to make it a comfortable home for his family. At the date of this deed, and during the years 1868 and 1869, Williams was possessed of property amounting in value to about twelve thousand dollars independent of the property held by his wife, and after all, or nearly all, the improvements had been put upon it. At

the date of the deed he owed four thousand dollars—one-half of which was due on his tobacco factory. The amount due on his factory was paid in 1868, and the balance of his indebtedness in 1869, out of moneys derived from collections and the profits of his business.

The bill avers that the indebtedness set forth therein was contracted prior to the date of the deed to wife. The answer of Williams and wife denies this, and states positively that no part of such indebtedness was contracted prior to the execution of the deed of 11th of February, 1868, or prior to putting the improvements on the land conveyed to the wife.

The appellee Penfield, in his deposition, says the indebtedness to the First National Bank of Quincy begun 14th April, 1870, and continued by renewals until the several notes were given, on which the three judgments set out in the bill were obtained. Unquestionably these debts had no existence at the time the property was conveyed, and no existence when the improvements were made. There is no testimony which dates the existence of these debts, or any part of them, prior to 14th April, 1870.

J. V. Alverson, president of Lagrange Savings Bank, in his deposition, says the first note to the Lagrange Savings Bank was made 1st April, 1871, (the record at page 63 shows it was made 14th August, 1871,) and in it was merged a note of George H. Simpson, W. Y. Williams, and R. N. Blackford for $800 or $1,000; that the old note was given some time in 1866 or 1867; the balance to make it up to $1,635.25 was money loaned them up to that date. He immediately qualified this answer by stating that, to the best of his recollection, these were the makers of the note so merged, but, in a conversation with Mr. Simpson in regard to this note, he is of the opinion that Mr. Old and somebody else were on the merged note with him, and not Williams.

Wm. Y. Williams, in his deposition, says the debts due

the Lagrange Savings Bank were commenced by other parties, and he became security or endorser for the same.

Again he says in answer to the question "did you and Geo. H. Simpson borrow from the Lagrange Savings Bank in two different notes as much as two thousand five hundred dollars during that period of time between the 1st of April, 1870, and the 1st day of September thereafter?" "I do not remember as to dates and amounts, but I endorsed paper for Geo. H. Simpson to that bank."

In confirmation of this testimony it will be borne in mind that in August, 1870, the said Williams removed from business, and at the date of the note, August the 14th, 1871, had no business relations with Simpson, and could not have borrowed this money jointly with him.

The form of the note shows that Geo. H. Simpson was principal, and Williams and Blankwood sureties.

George H. Simpson, in his deposition, says the old note merged into the note for $1,635.25 was a debt of Old's, with Cashman and himself as endorsers. He is certain he owed the bank nothing in 1869, when he drew out over three thousand dollars.

This evidence clearly establishes that the debt due the Lagrange Savings Bank of $1,635.25, which was first in point of time, had no existence, so far as Williams was concerned, till the date of note, August 14th, 1871, though Alverson dates it in his deposition 1st April, 1871.

The second debt due Lagrange Savings Bank is evidenced by the note on which judgment was obtained, and bears date February 1st, 1872. There is no pretension that this debt existed prior to that date. It is equally true that the obligation of Williams there is that of surety.

It is well established that these debts, whether due First National Bank of Quincy, or the Savings Bank of Lagrange, were contracted long after the time when the deed to Sarah C. Williams was executed, and after the improvements on the property had been made. That though Williams was

legally bound for these debts, they were debts for which others were primarily bound, and that he was only surety. That there is no debt now in existence which was contracted prior to the deed and the expenditure for improvements, and has been none such since 1868. Intentional fraud, or fraud in fact charged in the bill, is denied in the answer, and disproved by the deposition of W. Y. Williams.

When judgment was obtained on these notes the respectively to the said banks executions were sued out and levied on the real property conveyed to Sarah C. Williams as aforesaid, and under these executions it was sold for twenty-five dollars to U. S. Penfield, the appellee, as trustee for said banks, and by the sheriff conveyed to him.

It is believed and maintained that the decree in the court below is erroneous and should be reversed.

It declares in effect that the deed of 11th of February, 1868, is fraudulent as to the debts due the First National Bank of Quincy, and the Lagrange Savings Bank; that the deed being fraudulent as to these debts of Wm. Y. Williams the same is void, and the property by it conveyed to Sarah C. Williams was properly levied upon and sold to satisfy their debts, and that the sheriff's deed conveyed this property to the purchaser, U. S. Penfield; that this property was worth not less than twelve or thirteen thousand dollars, was properly taken from the wife to pay twenty-five dollars of the debts of the husband.

Is this deed fraudulent as to these creditors of Wm. Y. Williams—the First National Bank of Quincy, and the Savings Bank of Lagrange?

The deed declared to be fraudulent was made by James H. Skinner to Sarah C. Williams on the 11th day of February, 1868, conveyed property of the value of four thousand eight hundred dollars, the purchase money was paid by Wm. Y. Williams as a gift to his wife, and the deed was worded 24th February, 1868. The deed is not fraudulent as to creditors existing at time of its execution, because there

are none. When this deed was made Williams did not owe a single debt now in existence. On the contrary the evidence discloses the fact that every debt was paid in 1869, and that he had, at that time, a handsome property outside and independent of the property held by his wife.

To make a deed fraudulent as to subsequent creditors there must be proof of actual or intentional fraud.

In Payne *vs.* Stanton, 59 Mo., 158–160, the judge delivering the opinion of the court says: "the doctrine is well settled that a voluntary conveyance by a person in debt is not, as to subsequent creditors, fraudulent *per se.* To make it fraudulent as to subsequent creditors there must be proof of actual or intentional fraud." The judge, in the same case, quoted with approval Chan. Kent as follows:

"Actual fraud, or fraud in fact, must be proved in order to set aside a prior voluntary conveyance at suit of subsequent creditors."

See also Read *vs.* Lovingston, 3 Johns Ch. R., 501.
1st Story Equity Ju., §§ 355 to 366.

In section 361, quoting from Chancellor Kent, the author says:

"No voluntary *post-nuptial* settlement was ever permitted to affect them (existing creditors.) And the cases seem to agree that subsequent creditors are let in only in particular cases—as where the settlement is made in contemplation of future debts, or where it is requisite to interfere and set aside the settlement in favor of prior creditors. * * * That fraud in a voluntary settlement was an inference of law, and ought to be so, so far as concerned *existing* debts; but that as to subsequent debts there is no such necessary legal presumption, and there must be proof of fraud in fact."

This case turns upon the construction of the statute 13th Eliz., Chap. 5, from which the Missouri statute is borrowed.

In Sexton *vs.* Wheaton and Wife, (8th Wheat., 229,) the following doctrine is established by the U. S. Supreme

Court. Chief Justice Marshall delivered the opinion of the Court:

"The statute, 13th Eliz., Chap. 5, avoids all conveyances not made on consideration deemed valuable in law as against *previous* creditors. But it does not apply to *subsequent* creditors if the conveyance is not made with fraudulent intent. A voluntary settlement in favor of wife and children is not impeachable on that ground alone by subsequent creditors."

In Jackson *vs.* Post, (15 Wendell, 593,) the court lays down the following principle:

This deed is "not void as made in fraud of creditors, because although the grantor was indebted there was property enough left to pay his debts."

The debts which Wm. Y. Williams owed at the date of the deed, amounting to four thousand dollars, having been fully paid without any embarrassment to his business, and the debts in question being all subsequent to the deed, in order to make the deed fraudulent there must be proof of actual or intentional fraud.

The testimony in this case will be searched in vain for such proof.

The bill and amended bill both charge this fraud in fact. The charge is emphatically denied in the answer of Williams and wife.

Williams, in his deposition, says positively there was no intention on his part to defraud his creditors, whether existing or subsequent.

There is nothing in the facts proved from which fraud in fact can be presumed. After this deed was made, and before these debts were created, Williams having paid his entire indebtedness, had in his possession, independent of the property conveyed to his wife, the following property:

One-half interest in factory lots and building, machinery, and fixtures worth about	$6,000
Cash capital invested in business	6,000
One half interest in 48 acres of land	100
	$12,100

The property conveyed to his wife—

Forty-two acres cost	$4,800
Improvements made	6,400
	$11,200

So that before Williams contracted any of the debts now existing, and after the deed was made to his wife, he had in his own name and right property worth $12,100 beyond the property conveyed to his wife. And out of a fortune of $23,300, it was surely legitimate that his wife should have at his hands $11,200, when there was no creditor then in existence to complain. For it must be borne in mind that at this period (the spring 1870) two years had elapsed since the deed was made, and no debt was contracted till April 14, 1870. That the creditors whose debts have been since contracted had full legal notice of this deed by its recordation on 24th February, 1868. That no credit was given to Williams on the faith of the property conveyed to the wife. The world was notified it was hers, and not liable to his debts. When the first of these debts, (now existing,) amounting to less than six thousand dollars, was contracted on 14th April, 1870, Williams had in possession liable to such debt property worth over $12,000. The allegation in the amended bill that the said Wm. Y. Williams expecting to continue in the business of buying, manufacturing, and selling tobacco, a business subject to great risks and hazards, and known to him to be so, and expecting to contract and incur debts in the prosecution of his said business, had this property conveyed to his wife for the purpose of protecting it from the debts he expected to contract, is emphatically

denied in the answer thereto, and is not proved by the testimony. There are no circumstances from which the truth of this allegation can be presumed.

All the facts in the case disprove this allegation. The fact that he reserved more than half of his property. That he made what was considered ample provisions for his debts when he sold out and retired from business in August, 1870, by contracting with the firm of J. R. Harris & Co. as part of the consideration in the sale that this new firm, then considered very responsible, should pay all the existing debts of the retiring firm. That these debts now existing are all security debts, for which other parties are primarily bound. All these facts show that no fraud was contemplated as to future debts.

A similar allegation in the case of Sexton *vs.* Wheaton, cited above, is thus disposed of by Chief Justice Marshall, and his language is as applicable to this case as to Sexton *vs.* Wheaton:

"The allegation that the house in question was purchased with a view to engaging in mercantile speculations and conveyed to the wife for the purpose of protecting it from the debts which might be contracted in trade being positively denied and neither proved by testimony nor circumstances, may be put out of the case."

The facts in this case, instead of showing fraud in fact or intentional fraud in Williams when this deed was executed, show the strictest good faith to his creditors and a laudable, legal desire to provide a home for his wife and children.

This deed was not fraudulent when executed, and no circumstances arising afterwards can make it so. There is no ground to attach the suspicion of fraud to it.

The subsequent expenditure of money on this property to make it a proper home for his family is equally free from the taint of fraud. This expenditure was made and the improvements completed in 1868 and 1869, except a small shed built to the barn in the fall of 1877, and not all paid

for, and a small number of fruit trees planted about same time. The cost and date of improvements are as follows:

Dwelling-house finished August, 1868, cost	$5,500 00
Barn " 1868, "	400 00
Smoke-house and wood-house finished Aug., 1869, cost	400 00
Fencing finished August, 1868, cost	200 00
Orchard " 1869, "	250 00
Wells " 1869, "	65 00
	$6,815 00
By net profits on wood cut on the land and sold	1,000 00
	$5,815 00

Now when these expenditures were made on the land of Sarah C. Williams, amounting to $5,815.00, what was Williams worth independent of his wife's property so improved? It will be borne in mind that in 1869, when these improvements were completed, he had paid every dollar he owed in the world. That the withdrawal of the money to pay for the land and make the improvements had not embarrassed him or his business. The following spring (1870) we find him in possession of property independent of this property of the wife, amounting in value to $12,100, and $6,000 of which was cash capital invested in the business—a larger capital than he had ever had before in this business.

Williams had the legal right to expend this money on his wife's property at the time of the expenditure, provided there was no intentional fraud or fraud in fact connected therewith.

There was no fraud in fact. It is denied in the answer, disproved by the evidence of Williams, and all the circumstances show the transaction to be *bona fide*. All that has been said in regard to the deed will apply with full force to the expenditures for improvement, and the argu-

ment and citation of authorities need not be repeated. But if we concede for argument's sake that the expenditure or of some part of it was of money which properly belonged to the creditors of Wm. Y. Williams, still the court below erred in deciding "that all the right, title, interest and estate of Wm. Y. and Sarah C. Williams, on the 10th day of March, 1875, in or to said land, * * * be vested, and accordingly is hereby vested, in complainant."

Under this concession, the court could have gone no further than to subject the property to payment of debts, so far as the value of the improvements went, or such part thereof as were in fraud of these creditors.

The decree in that case should have been to pay the amount, and failing in that the property should have been sold, and the proceeds applied to pay the amount to the creditors, and the balance to Sarah C. Williams.

In the case of Kirby *vs.* Burns, 45 Mo. R., 235, an *insolvent* husband made valuable improvements on the land of his wife, paying therefor out of his own means. It was held that a court of equity would charge the property with existing debts to the extent of the value of improvements. Insolvency at date of expenditure made that case fraudulent, and was the controlling fact.

If the proof in that case had been, as it is in this, that the husband at the date of the expenditure had large assets over and above the amount expended, greatly more than sufficient to pay his debts, and that he did pay all existing debts without embarrassing his business, the court must have decided that no trust arose in favor of existing creditors. That the expenditure was *bona fide*, and should be protected.

This is in accord with the principle established in Patton *vs.* Casey, 57 Mo. R., 119; and Payne *vs.* Stanton, 59 Mo. R., 158.

In the case of Champion *vs.* Cotton, 17 Vesey, 263, the English doctrine is stated as follows:

"Sums of money expended by the husband for the benefit of the wife's estate in payment of taxes or making improvements, will not raise a resulting trust in favor of the subsequent creditors of husband."

This distinction of a trust resulting to creditors, between existing and subsequent creditors, is founded in reason and sound principle.

The existing creditor may with reason insist upon this resulting trust on the ground that the money expended on the wife's property ought in equity and good conscience to have been applied to the payment of his debt, and he may with propriety urge that a court of equity should follow this fund, (really his,) and charge the land thus improved with his debt to extent of improvement. A subsequent creditor can make no such claim in a court of equity. He cannot say in this case that my money improved the property, or that he gave credit on the faith of this money expended on the wife's property; for the records showed that the property and improvements belonged to the wife before the debt was contracted.

It is conceded that when it clearly appears from the evidence that the husband at the time of the expenditures intended to contract the debts sought to be charged, and intended thereby to defraud his creditors, this resulting trust will arise.

Payne *vs.* Stanton, 59 Mo. R., 158.
Seward *vs.* Jackson, 8 Cowen R., 406.
Bennett *vs.* Bedford Bank, 11 Mass. R., 422.

But nothing of the sort appears in this case. The title to the land vested in Sarah C. Williams. Under the deed, which was duly recorded in February, 1868. The land was unimproved timber land. The timber was used to pay for the improvements as far as it would go. After expending a thousand dollars derived from this source, and five or six thousand dollars more, he had left to himself twelve thou-

sand dollars in visible property in the spring of 1870, when the first of these debts was contracted.

There can be no ground whatever to presume that in 1868 and 1869, while making these improvements, Williams expected and intended to become liable to the First National Bank of Quincy and the Savings Bank of Lagrange, and these improvements were made to defraud these creditors, especially when it appears that all these debts are security debts, and that so far as they were once his own, he had made in the sale to the new firm what was considered ample provision for their payment.

The notes on which suits were brought by the First National Bank are dated, respectively, June 3, June 19 and July 19, 1871. They are signed by the firm of J. R. Harris & Co., of which Williams was not then a member, and by Williams and others as sureties. (See pages 26, 33 and 44 of Record.) Williams was not primarily bound for these debts, and it cannot be presumed he was arranging to commit an intentional fraud in 1868 and 1869 as to debts not then contracted, and for which he is only bound as security. Fraud in fact cannot be presumed from these facts.

The land was conveyed to Sarah C. Williams in February, 1868. The last payment therefor was made before the execution of the deed. The expenditures for improvements were made and paid for in 1868 and 1869, at least all except a most unimportant part. If all this was done to defraud his subsequent creditors, why did he retain so important a part of his estate—more than one-half? Why did he make provision for the payment of his firm debts when he sold out in August, 1870, and retired from business? and which debts of his firm were actually assumed by the succeeding firm. Why, in making the sale to the succeeding firm of J. R. Harris & Co., did he contract for and receive as part of the price agreed on, this assumpsit of the debts of the retiring firm? Why did he receive in part pay for his interest in this firm real estate in Illinois? If his

intention was to defraud his creditors he would have sold for the largest amount he could realize in money, and placed it beyond the reach of his creditors. This view of the subject reflects a flood of light back to the date of deed and of the expenditures for improvements. It shows there was absolutely no fraud on the part of Williams in his sale in August, 1870, and the reflected light of this transaction shows that no fraud was intended in the deed and improvements.

Instead of deducing fraud, intentional or actual, from these facts they show that Williams was actuated by the highest sense of justice to his creditors.

The proof in this case comes up fully to what the learned judge in the court below says, on page 165:

"If a man engaged in business which is prosperous, makes a reasonable provision for his wife, still retaining abundant means in his own right to meet every demand against him, the voluntary conveyance should be sustained."

This is precisely the case here. Williams was engaged in a prosperous business. The testimony shows he continued to prosper until the year 1870; two years after the land had been paid for and conveyed to the wife, and one year after the money had been expended in improvements. The provision made for the wife was reasonable, not half of his property. He retained abundant means in his own right to meet, and did meet, every demand against him.

Under this well estalished doctrine, as laid down by the judge, a proper understanding of the evidence must have led him to sustain the deed and dismiss the bill.

The learned judge proceeds on pages 165–166:

"If, on the other hand, he has embarked in a hazardous business, the outcome of which is problematical, he cannot withdraw therefrom any portion of his assets for settlement on his wife leaving the hazards to be borne by either existing or subsequent creditors. It is not the rule, however,

that a person of adequate means proposing to embark in business cannot before doing so settle on his wife what is reasonable under the circumstances in order to avoid hazarding his whole fortune by new enterprises."

Tried by the rule laid down in the latter part of above extract this deed and expenditure must be sustained. The settlement was reasonable. No embarrassment to his firm arose for want of the funds settled on his wife. The firm proceeded prosperously until August, 1870, when Williams voluntarily retired from it, and the want of capital to conduct it was never felt, so far as the evidence discloses. It did not impair the credit of the firm of which he was a member. It was as good after the settlement and expenditure as before.

The learned judge says the business in which Williams embarked when this settlement was made was hazardous.

It will be borne in mind it was identically the same business he had been engaged in for two years. It was no new enterprise. It was not hazardous—and no witness says it was—after the passage of the stamp act. It was hazardous before, says a witness, because parties undertook to cheat the Government. Cheating makes any business hazardous, especially when a trader undertakes to cheat the Government, with its vast powers and resources to crush the party that undertakes it. Williams did not suffer from this cause because he was an honest trader. One of his partners who had a separate house and was conducting the same business in Hannibal did suffer from this cause and the interest of that partner in the Lagrange factory was sold to pay his taxes on tobacco at the Hannibal store. The stamp act was passed in July, 1868, and all the witnesses agree that afterwards this was not more hazardous than any other business.

It is considered, the world over, as a safe, profitable business. Williams prospered in it till he retired in August,

1870. The firm which succeeded him made money till the failure of the Chicago firms, when it met heavy reverses.

The loss of the new firm from this cause was such as men in all branches of business are liable to meet. If the man who buys the farmer's crops or the mechanic's wares fails, loss, and maybe bankruptcy, would overtake the seller; but it would not do to say that the vocation of the farmer or mechanic was therefore hazardous.

It is insisted that there was no extraordinary hazard attending this business, which Williams had followed for two years; had prospered in it; and there was no intention on his part to go into a new or more hazardous business, which made this settlement necessary, but to continue his old and profitable trade. If this view of the case be correct, Williams had no idea of committing a fraud when this settlement was made and the money expended to improve the property.

In the case of Payne *vs.* Stanton, (59 Mo. R., 159,) cited above, the law of Missouri applicable to this case is clearly laid down and defined. The court says:

"The doctrine is well settled that voluntary conveyance by a person in debt is not as to subsequent creditors fraudulent *per se*. To make it fraudulent as to subsequent creditors there must be proof of actual or intentional fraud. As to creditors existing at the time, if the effect and operation of the conveyance are to hinder or defraud them, it may, as to them, be justly regarded as invalid. But no such reason can be urged in behalf of those who become creditors afterwards."

"A voluntary settlement made by the husband on the wife cannot be impeached by subsequent creditors on the sole ground it is voluntary."

Pawley *vs.* Vogel, 42 Mo. R., 303.

"Where the facts and circumstances are as consistent with an honest intent as with an intent to defraud, no presumption of fraud will arise."

Rumbolds *vs.* Parr, 51 Mo. R., 592.

"Fraud in a deed from husband to wife will not be inferred from the mere fact that the husband was at the time indebted."

Buckner *vs.* Stine, 48 Mo. R.

This is especially true if all the debts existing at the time are promptly paid.

These are some of the decisions of the highest court of Missouri on its statutes of fraud, which, as above stated, was borrowed from 13 Eliz., chap. 5.

In all the States where this statute has been adopted the doctrine of the Missouri cases has been followed.

In Phillips *vs.* Wooster, 36 N. Y., 412, the court says:

"A subsequent indebtedness cannot be invoked to make that fraudulent which was honest and free from impeachment at the time."

See also Parker *vs.* Proctor, 9 Mass., 390.
Tappan *vs.* Butler, 7 Bos., 480.
Keeler *vs.* Ulrich, 32 Mich., 88.
Chambers *vs.* Sallie, 29 Ark., 407.
Brown *vs.* Spivey, 53 Geo., 155.
Woolbridge *vs.* Gage, 68 Ill., 157.
Kane *vs.* Roberts, 40 Md., 590.
Riskill *vs.* McCauley, 7 Kaisk, 712.
Cosby *vs.* Ross, 3 J. J. Marshall, 290.
Pike *vs.* Miles, 23 Wis., 164.

The decisions in this Court sustain this doctrine without exception.

See Sexton *vs.* Wheaton, 8 Wheat., 229, cited above.
Hindes, Lessee, *vs.* Longworth, 11 Wheat., 199.
Mattingly *vs.* Nye, 8 Wal., 370.
Lloyd *vs.* Fulton, 1 Otto, 480.
Smith *vs.* Vodges, 2 Otto, 183.

In the last case the Court says:

"The law of this case is too well settled to admit of doubt. In order to defeat a settlement made by a husband upon his wife, it must be *intended to defraud* existing creditors or creditors whose rights are expected shortly to intervene, or creditors whose right may, and do, so supervene."

If any of these tests are applied to this case the deed and expenditures must be sustained as *bona fide* against subsequent creditors.

It will be borne in mind that by the decree of the court below Williams and his wife are both divested of all right, title, interest, and estate in the property, and the same is vested in appellee Penfield by virtue of his purchase at sheriff's sale. Surely this is erroneous in any view that can be taken of the case.

Suppose the deed was fraudulent, and the expenditures in fraud of the creditors named in the bill, have Williams and his wife no interest in this property under the law of Missouri?

We will examine this case in the worst attitude it can be made to assume for Williams and wife, and for the sake of the argument concede the deed and expenditures both fraudulent. In this view of the case the wife, Sarah C. Williams, has an inchoate right of dower in this property, and no conduct of her husband can deprive her of it. If the land does not belong to her, then it did belong to her husband, and if she survives him she will be entitled to one-third of it for and during her natural life.

In chapter 130 of the General Statutes of Missouri it is provided that "every widow shall be endowed of the third part of all the lands whereof her husband or any other person to his use was seized of an estate of inheritance at any time during the marriage, to which she shall not have relinquished her right of dower in the manner prescribed by law, to hold and enjoy during her natural life."

If the deed to the wife is fraudulent and void then Williams stood seized of an estate of inheritance in it, or Skin-

ner did to his use, and the wife must be entitled to dower in case she survives her husband.

The wife is a party to this suit. If the decree below is sustained she is bound by it and could not assert her right to dower in the face of this decree, which divests her of "all right, title, interest, and estate."

But Sarah C. Williams was also entitled to her dower right in the dwelling and three lots which her husband purchased of Peake, and which were conveyed to Skinner by Peake in part payment of the forty-two acres conveyed by Skinner to her, so that her dower interest in the Peake property was used in purchasing the property in dispute, and to that extent, and of her dower interest in the forty-two acres, she still has an interest in this property and the decree must be erroneous.

But by the law of Missouri there was a homestead exemption attaching to this property, either in Williams or his wife.

Section 1 of chapter 3, title 29, of the general statutes, provides as follows:

"The homestead of every housekeeper or head of a family, consisting of a dwelling-house and appurtenances and the land used in connection therewith, not exceeding the amount and value herein limited, which is or shall be used by such housekeeper or head of a family as such homestead, shall, together with the rents, issues, and profits thereof, be exempt from attachment and execution, except as herein provided. Such homesteads in the country shall not include more than 160 acres of land or exceed the total value of fifteen hundred dollars."

Section 7 provides:

"Such homestead shall be subject to attachment and levy of execution upon all causes of action existing at the time of acquiring such homestead, except as herein and otherwise provided; and for this purpose such time shall be the date of filing in the proper office for record of deed of such homestead."

The deed to Mrs. Williams was executed and recorded "in the proper office" in February, 1868, and she with her husband and children moved on the premises in the fall of that year, and they have continued to occupy the dwelling house and appurtenances ever since.

The cause of action in the judgments set out in complainants' bill did not, nor did that of any one of them, exist when the said deed was filed for record.

The first cause of action to First National Bank did not exist before the 14th April, 1870, and of Lagrange Savings Bank till the next year.

If the theory of the appellee is sustained, and on which the decree below is based, that Williams, the husband, had an equitable estate in this land, which was liable to seizure and sale under execution, and that the sheriff's deed passed to the purchaser thereof an absolute title, then on that theory Wm. Y. Williams had a homestead exemption in said property, and which, under the law, was not subject to seizure and sale for his debts contracted after acquiring this property in 1868.

The deed under which Wm. Y. Williams acquired the estate, which the court decided, was liable to seizure and sale under these executions, was the deed from Skinner to Sarah C. Williams, which was recorded as above stated in February, 1868, and under which possession was taken as a dwelling place before these debts or any of them were contracted.

The decree in the court below, divesting both Williams and his wife of this homestead exemption, must be erroneous.

In Buck *vs.* Ashbrook, 59 Mo., 200, the court held that where a party indebted purchased property in his wife's name, and had the same conveyed to the wife, and this deed was set aside as fraudulent, and the land sold for payment of husband's debts, the husband is entitled out of the proceeds to an amount equal to the value of the homestead.

The homestead exemption was given to enable the family

of the debtor to retain a home, and fraud on the part of the husband does not forfeit it.

Cox *vs.* Wilder, 2 Dillon Cir. Ct. Rep., 46.
Volger *vs.* Montgomery, 54 Mo., 577.
State *vs.* Diveling, 66 Mo., 375.

In any view that can be taken of this case the homestead exemption should have been reserved to the family, and it was unquestionably an error to decree that "ALL the right, title, interest and estate of Wm. Y. Williams and Sarah C. Williams vested in Penfield by virtue of the sheriff's deed."

But the decree of the court below violates one of the cardinal maxims of a court of equity, "He who seeks equity must do equity."

"This maxim *principally* applies to the party who is seeking relief in the character of plaintiff in the court. Thus, for instance, if a borrower of money upon usurious interest seeks to have the aid of a court of equity, * * the court will not interfere in his favor unless upon the terms that he will pay the lender what is really and *bona fide* due him."

Story's Equity Jurisprudence, §64 *c*.

In Sturgis *vs.* Champneys, 5 Mylne & Craig, 97–101–102, cited in note to above section, Lord Cottenham said:

"Hence arises the extensive and beneficial rule of this court, that he who asks for equity must do equity; that is, this court refuses its aid to give the plaintiff what the *law* would give him if the courts of common law had jurisdiction to enforce it, without imposing on him conditions which the court considers he ought to comply with, although the subject of the condition should be one which this court would not otherwise enforce."

A familiar application of this maxim will be found in that large class of cases in which courts refuse to assist

husbands in obtaining possession of wife's property without a proper settlement for her support.

It is conceded that mere inadequacy of price is not sufficient to avoid a sale; that is, if a person *sui juris* makes a sale of his own property HE cannot avoid his own contract on the ground that he sold for an inadequate price.

But inadequacy of price if gross and attended by circumstances evincing unconscientious advantage taken by the purchaser of the improvidence and distress of the vendor will avoid the contract in equity although executed.

McKenney *vs.* Pinckhard, 2 Leigh, 149.
Evans *vs.* Llewellyn, 2 Bro. C. C., 150.
Groves *vs.* Perkins, 6 Sim., 576.

And if the inadequacy of price is so gross as to be itself sufficient evidence of fraud, then the contract will be void.

Rice *vs.* Gordon, 11 Beavan, 265.

The inequality of price, in order to amount to a fraud, must be so strong as to shock the conscience and confound the judgment of any man of common sense.

Osgood *ads.* Franklin, 14 Johns. Ch. R., 527.
How *vs.* Weldon, 2 Vesey, Sr., 516
Gwynne *vs.* Heaton, 1 Bro. C. C., 1.

These are all cases where the sale was made by the owner of the land, and the courts have gone to the extent of declaring such sales void for inadequacy of price when so gross as to amount to fraud *per se.*

How much stronger is the case when a man's property, worth twelve or fourteen thousand dollars, (conceding now it was the property of William Y. Williams,) is levied on by the sheriff and sold by this officer of the law for twenty-five dollars, a price so grossly inadequate as "to shock the conscience and confound the judgment of any man of common sense." This view of the case is strengthened by the fact that the sheriff made but one effort to sell, and without

a further effort to obtain a fair price, knocked it down to the *execution creditors* at less than one five-hundredth part of its true value.

Now when this sale was made and the sheriff conveyed the property to Penfield for the use of the execution creditors, the legal title to same was in Sarah C. Williams, and the vendee was compelled to file his bill in a court of equity, and ask its aid to obtain possession of this land, to execute this unconscionable bargain. Without the aid of the court of equity this possession of Sarah C. Williams, under her deed from James H. Skinner, could not have been disturbed. The plaintiffs in the court below were forced to come into a court of equity, and there is no case in the books which calls so loudly as this for the application of the maxim that "he who seeks equity must do equity."

Under this doctrine, so well established and so proper, if the court below considered the deed and expenditures fraudulent, the utmost relief that could be afforded was to declare the fraud, avoid the deed, and sell the property for a fair price.

Indeed, a court of chancery will hardly ratify a sale at the instance of the vendee when the title to the property was in such condition as to preclude a fair sale. It will not be pretended that any one would have purchased this property under the circumstances but the execution creditors themselves, and a public sale of the property, so situated, was nothing more than a public farce.

The appellants maintain that the decision in the court below is erroneous for the reasons above given, and on the grounds above set forth, to wit:

1st. Because the court decided that the deed from Skinner to Sarah C. Williams was fraudulent as to the subsequent creditors—that is, there was intentional fraud or fraud in fact.

2d. Because the court decided that the expenditures for

improvements on this land, made by Wm. Y. Williams for the benefit of his wife, were fraudulent as to these expenditures.

If the court below erred in these particulars then the bill of complainanants should have been dismissed.

3d. Because the court decided that ALL the right, title, interest, and estate of Wm. Y. Williams and Sarah C. Williams vested in Penfield by virtue of his purchase and deed from the sheriff, without saving to the wife her dower in case she survive her husband.

4th. Because the court did not save to Williams the homestead exemption.

5th. Because the court, at the instance of the purchaser, ratified an unconscionable bargain and set at nought the equity maxim that "he who seeks equity must do equity."

Respectfully submitted,

EPPA HUNTON,
W. H. HATCH,
Attorneys for Appellants.

16-260

Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 19.

WM. Y. WILLIAMS AND SARAH C. WILLIAMS,
APPELLANTS,

vs.

W. S. PENFIELD ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR EASTERN DISTRICT OF MISSOURI.

Reply of Appellant's Counsel to the Brief of Appellee's Counsel and to their rejoinder.

EPPA HUNTON,
W. H. HATCH,
Counsel for Appellees.

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Whether the deed of the 11th day of February, 1868, and the expenditures made on the land therein conveyed to Sarah C. Williams are fraudulent, depends entirely on the facts proved. When the facts are established the law applicable to them is plain enough.

What was the pecuniary condition of Williams prior to and on the day when the said deed was executed?

The complainants (appellees) took the depositions of five witnesses—Quisenberry, Million, Harris, Penfield and Alverson—they will be found on pages 89–91, 94–95 and 99, respectively, of the printed record. Penfield is not examined as to the pecuniary condition of Williams.

What do the others say?

Quisenberry says he was a partner of Williams in the general merchandise business, commencing in the spring of 1863, and terminating about two years thereafter, when Williams went into the tobacco business with Wakefield.

Quisenberry bought out Williams' *interest in the stock* for about $400 or $500. When this partnership was formed Williams put into the firm goods valued at from thirty to thirty-two hundred dollars. (Answer to 19th interrogatory, page 90.) The firm made profits, but witness cannot state whether one hundred or one thousand dollars. (Answer to 20th interrogatory.) At that time Williams also owned a brick house on a nice plat of ground, containing several lots, having fruit trees and shrubbery on it; supposed this property, in 1863, was worth twenty or twenty-five hundred dollars. (Answer to 16th interrogatory.) Williams drew out money from time to time. (Answer to 26th interrogatory.) Milton Million, who had no friendly relations with Williams, testifies that he knew Williams from 1863; at that time he was a partner with his brother, Samuel Williams, in merchandising. They had a small stock of goods. There was considerable talk in the spring of 1864 that they had "gone up;" that is, broken up in their merchantile business—not that the real estate was gone, or anything like that. The real estate was worth some twelve or fifteen hundred dollars. (See pages 92, 93.) And yet Quisenberry states that in the spring of 1863 (one year before Million heard the talk that Williams and his brother Samuel had gone up) he went into partnership with Williams, and that Williams put into the firm goods to the value of thirty to thirty two hundred dollars, and that this partnership (Quisenberry and Williams) continued two years. The unfriendly relations between Million and Williams must have inspired the testimony of the former.

Jacob R. Harris testifies; his testimony will be found on pages 94 and 95. He was a partner of Williams in the

tobacco business in 1870. It was a hazardous business till passage of stamp act, which was passed in 1868.

Williams pointed out the property embraced in the deed of the 11th of February, 1868, as his.

J. V. Alverson testifies that in 1866 Williams owned a house and two or three lots and an interest in the stock of goods held by Quisenberry and himself. (Answer to 8th interrogatory, page 100.) This is all of the testimony of the complainant as to the pecuniary condition of Williams up to 1870, when he retired from trade.

It will be seen from it that Williams, before he entered into the tobacco business, was worth in goods over three thousand dollars in the firm of Quisenberry & Williams, and real estate worth, according to Quisenberry, twenty or twenty-five hundred dollars. No evidence that Williams was ever unfortunate in trade, but made small profits. The testimony on this point, taken by defendants, (appellants,) consists first of the depositions of William Y. Williams. (Page 108.) He testifies that after his various partnerships, both in merchandising and manufacturing tobacco, on the 11th day of February, 1868, when the deed was made, he was worth one undivided half in the "Globe Tobacco Works," including all the machinery, fixtures and stock in the same, of the value of ten or twelve thousand dollars; also an undivided interest in 48 acres of land worth $100. (Page 113.)

George H. Simpson testifies that he was a partner of Williams in 1869 and 1870 in the manufacture of tobacco. He thinks, from the spring of 1869 (March) to the spring of 1870, Williams was able to meet his obligations and discharge his liabilities. (Answer to 23d interrogatory.)

He owned one-half of the real estate and building and machinery therein situated, worth from five to seven thousand dollars, and his interest in the working capital of the firm was worth six thousand dollars or over. (See answers to interrogatories 25 and 26, page 148.)

This is all the testimony on the subject of the pecuniary condition of Williams up to August, 1870, when he retired from trade. It shows that Williams, who is described as an honest trader, by his industry continued to make money, and that at the date of the deed, the 11th of February, 1868, was worth, after paying for the land conveyed to his wife, and independent of it, ten or twelve thousand dollars; and in 1870, after all the improvements had been completed, was worth from eleven to thirteen thousand dollars; that the money taken to pay for the property and to improve it did not embarrass his business. He had more in his business, after paying for land and improvements, than ever before, owing to the prosperity of this business.

It would not seem from this testimony that there was any reason why Williams should undertake to cover up his property to defraud his creditors up to 1870. He is described by all the witnesses as a prosperous man, ready, willing and able to meet all his liabilities.

Now let us see how he stood in regard to his debts from the 11th of February, 1868, and up to 1870, when the property had been paid for, and all the improvements except an immaterial part had been made.

The counsel for appellees in their brief, page 15, in the heading No. 1 of their argument, say:

"The testimony in the case proves that at the time of making the settlement in question, (11th February, 1868,) Williams, the settler, was deeply in debt and greatly embarrassed in his pecuniary affairs, if not wholly insolvent."

Let us examine the testimony as to the indebtedness of Williams on 11th February, 1868. The testimony of Williams himself is mainly relied on to show this indebtedness. On page 114, Williams says to question as to his indebtedness in February, 1868: "I was indebted some; cannot say just how much, but think the amount would not exceed two thousand dollars, except the last payment on the to-

bacco factory, which was either paid at the time or some time after." In answer to another question on same page he said: "I paid the amount due on the tobacco factory some time in the early part of the year 1868, I think; the other amounts that I was indebted I paid from time to time during the year 1869, and probably some in 1870." The counsel for appellees on same page say: "On cross-examination it was brought to his mind that Wakefield, a former partner, had absconded, leaving him (Williams) and his sureties on his bond to pay the Government tax on the firm's tobacco;" and that the amount of Wakefield's liability was something more than $2,000. If Williams owed this debt at the date of deed, it made his indebtedness some six thousand dollars.

Now it seems that this liability of Williams for Wakefield grew out of the tax on the tobacco of the firm. This firm was dissolved in December, 1866, page 122, and it is not probable that the Government waited until December, 1868, for its taxes. Such is not the habit of the Government; and Skinner must be mistaken when he says Williams came to him a few days before the 20th December, 1867, and told him he might not be able to pay at maturity; that Wakefield had run off and left him some debts to pay. Williams, on page 122, says the partnership with Wakefield and Moore was dissolved in December, 1866; Wakefield and Moore sold part of their stock and absconded. This must have been in 1866, and the debt of Wakefield, for which Williams was bound to the Government, must have been paid soon after. At any rate it was paid, whether in 1866, or 1867, or 1868. It was paid without embarrassment to Williams. In December, 1866, he formed another partnership with William B. Mann, (page 112.) Into this new firm the said Williams put in cash several thousand dollars, (page 118.)

Mr. J. B. Alverson says (page 106) that William Y. Williams & Co. had an account with the La Grange Savings

Bank from July, 1867, to August, 1870. They were indebted to the bank to a greater or less amount during that period. It appears from his cross-examination on page 107 that this indebtedness was on account of what was commonly known as tobacco paper, and at one time the firm was liable on such paper for $21,000, but how much of it had been paid before the 11th of February, 1868, he could not tell. This tobacco paper consisted of drafts on the purchasers of tobacco, and was collected at the bank.

The testimony of Thomas Price was taken by the appellants (page 141). He was connected with the La Grange Savings Bank from some time in 1866 till 1869. He was out from April, 1869, to April, 1870. He was secretary of the bank and acted as cashier. Williams & Co. kept their deposit account there. Collections were made for sales of tobacco, but he did not recollect any discounts. The collections were large—the account one of the largest of the bank. Claims against the firm placed in the bank for collection were paid promptly. Thinks Williams was perfectly solvent from the fall of 1867 to the spring of 1870.

This is the whole of the testimony as to the indebtedness of Williams in February, 1868, except the testimony of Alverson in regard to one of the notes on which judgment was obtained, which will be considered hereafter. Whatever that indebtedness was on that day, whether four or six thousand dollars, it was all paid off promptly, and left in his hands property of the value of ten or twelve thousand dollars, independent of the property conveyed to his wife, which was also paid for in full.

Instead of being deeply in debt, greatly embarrassed, if not wholly insolvent, as charged in brief of appellees' counsel, he was nearly clear of debt, absolutely free from embarrassment, and with property worth ten or twelve thousand dollars.

It is admitted that a voluntary settlement made by one who is insolvent is presumptively fraudulent as to existing

creditors of the settler. What debt of Williams is now due which existed at date or settlement? We answer emphatically, none. The counsel for appellees, in their brief, page 24, say a part of debt evidenced by the note of Simpson, Williams & Blackwood for $1,635.25 was for an old debt of 1866 or 1867 by the same parties, and that this old debt amounted to eight or ten hundred dollars, and was merged in the note for $1,635.25, on which one of the judgments was obtained as set out in the bill.

It is not pretended there is any other debt now outstanding which existed at date of conveyance. All the rest are by confession debts created since the date of the deed assailed as fraudulent. And if counsel are mistaken when they claim this as an existing debt, then Williams made this settlement on his wife, left no debts unpaid which existed at date of settlement, and had property worth ten or twelve thousand dollars. Surely, if we can show from the evidence that this debt did not in any part exist at date of the deed, the settlement must be sustained.

Did it so exist? Much of the evidence on this point is quoted in our former brief, pages 3 and 4. We will recapitulate.

J. V. Alverson, president of the La Grange Savings Bank, in deposition (page 99) says, the first note to the La Grange Savings Bank was made the 1st of April, 1871, (the record at page 63 shows it was made the 14th of August, 1871,) and in it was merged a note of George H. Simpson, W. Y. Williams and R. N. Blackwood for $800 or $1,000; that the old note was given some time in 1866 or 1867; the balance to make it up to $1,635.25 was money loaned them up to that date. He immediately qualified this answer by stating that to the best of his recollection these were the makers of the note so merged, but in a conversation with Mr. Simpson in regard to this note he is of the opinion that Mr. Old and some one else were on the merged note with him, and not Williams.

Now this is all the testimony referred to by the appellee's counsel in their brief, except to say that Williams, who had been previously examined, said, in answer to a question whether any of the indebtedness upon which judgments were recovered antedated the settlement, "not that I know of," and this he calls a characteristic answer.

We think the evidence of Williams is stronger taken together than the single quotation above referred to. He is asked the question, did you and Geo. H. Simpson borrow from the La Grange Savings Bank, in two different notes, as much as two thousand five hundred dollars during that period of time, between the 1st of April, 1870, and the 1st of September thereafter. He answered, I do not remember as to dates or amounts, but I endorsed paper for Geo. H. Simpson to that bank. Now this was before Alverson's testimony, and the attention of Williams had not been drawn to this old note, claimed to be the note of Williams and others, merged into the note of $1635.25.

If the testimony stopped here, we might with confidence ask if the appellees had met the burden on them to prove this part of the debt antidated the settlement? But, fortunately, it does not stop here, and the matter is made plain by the testimony of two disinterested witnesses.

Geo. H. Simpson, in his deposition on page 160, says the old note merged into the note for $1635.25 was a debt of Olds, with Cashman and himself as endorsers. He is certain he owed the bank nothing in 1869, when he drew out over three thousand dollars.

Simpson is the man who gave the note for $1635.25, into which the old note was merged. He surely, of all others, ought to know whose note it was that was merged, and he says positively it was the note of Olds, with Cashman and Simpson as endorsers, and that Williams became surety in the note for $1635.25. But this is not all, Thomas Price, in his deposition, on page 145, says his impression is that this note was made up by about $800 dollars over-draft in

fall of 1869, and a remnant of one or two other notes. I think one of these remnants was a note of Cashman and Olds.

And in confirmation of this overwhelming testimony, it will be borne in mind that in August, 1870, Williams retired from business, and at the date of the note, August 14, 1871, had no business relations with Simpson, and could not have borrowed this money jointly with him.

Then there was no present debt of Williams in existence prior to the 14th of April, 1870, when the first debt now claimed by the First National Bank at Quincy was contracted. (See deposition of W. S. Penfield, page 97.)

All debts existing at the date of the deed have been discharged, and the same is true of the expenditures of Williams for the improvement of his wife's property. All the improvements were finished in 1868 and 1869, except a small shed built to the barn (wnich has never been wholly paid for) in 1877, and a small number of fruit trees planted about the same time.

So that this property was paid for and improved before any debt now existing was contracted.

In such case, fraud will not be presumed as to subsequent debts. (See authorities quoted in our first brief on pages 6, 7, 11, 16 and 17.)

The next proposition contained in the brief of appellees' counsel is that though the creditors of Williams in their suit may be subsequent creditors, yet the settlement is void under the Missouri statute, because made with fraudulent intent.

That is, in the language of the authorities cited in our first brief on pages 16, 17 and 18, there must be intentional fraud or fraud in fact. No such fraud will be presumed, but must be proved. (See authorities above referred to.)

It is confidently asserted that no such fraud is proved in this case.

The learned counsel for appellees say this fraud will be

inferred from the two facts established—that the settlement was voluntary, and the settler was largely in debt, unless the inference be repelled by contrary proof.

There is no direct evidence upon the subject of fraud in fact except in the deposition of Williams, who swears that he had no intention to defraud his creditors, either existing or subsequent. Intentional fraud is also denied both by Williams and his wife in their answer. Are there any circumstances proved in the case from which fraud may be inferred? We say, no. The only circumstance cited by the counsel from which it may be inferred is that he was largely in debt. In the first place, the evidence does not prove he was largely in debt. The debts which he owed at date of settlement and up to the expenditures for improvements were entirely within his ability to pay without embarrassment to his business. He did pay them all, and his business was not hurt, but was conducted prosperously to the end—and this, too, after he paid the money for the property and its improvements. In order to prove fraud which will vitiate this deed, there must be proof of fraud in fact when it was executed. No fact established by the evidence furnishes this proof. Nor is there one from which fraud can be inferred. But all the facts taken together disprove the fraud or repel the idea of any intentional fraud or fraud in fact.

The deed was made in February, 1868. There is no debt now in existence which was contracted earlier than April, 1870. If fraud was intended, he would hardly have continued to pay all debts for more than two years. The notes on which the national bank obtained their judgments are dated June 3d, June 19th, and July 19th, 1871, respectively. If this indebtedness began, as stated by Penfield in his deposition (page 97), on the 14th of April, 1870, Williams took care of this indebtedness, to the satisfaction of the bank, by a renewal or otherwise, for more than a year—

to June 19, 1871. Is this a fact from which intentional fraud in February, 1868, can be inferred? Williams remained in the tobacco trade till August, 1870. His last firm was J. R. Harris & Co. In August, 1870, he sold his interest in said firm. The new firm was also J. R. Harris & Co. When he sold out, his assets were sufficient to pay his debts. He owed none except as a member of the firm of J. R. Harris & Co. How does it appear he had assets enough to pay the debts of the firm, or his share of them? By the terms of sale to the new firm. This new firm, in consideration of the interest of the two retiring members, agreed to assume and pay the debts of the old firm, and to give them (the retiring members) certain real estate in Illinois. So that his assets in the firm were sufficient to pay all his debts and buy the Illinois land. Does this transaction reflect back on the deed of the 11th of February, 1868, and show intentional fraud at that date? Nay, does it not show most unmistakably that the whole conduct of Williams from the first was entirely *bona fide*, and that he not only intended to pay his just debts, but actually made arrangements with a solvent firm to pay them. These debts are not the debts of Williams. He is only security for them. The banks acted on the contract between the retiring members of the old firm of J. R. Harris & Co., and accepted the notes of the new firm of J. R. Harris & Co. for such debts as the old firm owed. This is shown by the dates of the notes on which judgments were obtained, and the first is dated nearly a year after the old firm ceased to exist.

How much of these debts was due by the old firm the evidence does not disclose. The new firm of J. R. Harris & Co. agreed to pay whatever it was, and when the banks, acting under this arrangement, took the notes of the new firm for the debts due by the old, it was a novation and a discharge of the old notes. It is true Williams became surety for these debts, and is bound for them only as such. His only failure to pay his debts grows out of this liability to the two banks as surety for others.

The counsel for appellees say on page 29 of their brief:

"The settlement in hand being voluntary, and having been made with a view to trade, and for the purpose of providing against its contingencies, the law presumes in favor of subsequent creditors that it was made with fraudulent intent."

Now there is no evidence in the case to show that this settlement was made with a *view to trade*.

Williams had been continuously in the tobacco trade since 1866; was familiar with the business; had accumulated money in this trade. He certainly expected to and did continue this same business; but there is nothing in the case to show he changed his trade. He did change his partner, but made no change in his trade or vocation. The old business carried on after the deed of settlement continued prosperous till he retired in August, 1870, when he sold out for a sum sufficient to pay all his debts and the Illinois real estate, that is in the sale of his business, a part of the consideration was the payment of his debts, and the balance the Illinois farm.

If fraud had been intended—if protection from future debts had been intended in the settlement, he would have sold for a less price in money and put it beyond the reach of his creditors, whose debts were all provided for in the sale, and with a full knowledge of that fact on their part, for they took the notes of the new firm, with Williams as security, nearly a year after the sale.

It cannot be maintained that the evidence discloses any circumstances from which fraud on the part of Williams can be inferred. The new firm of J. R. Harris & Co. continued to prosper in this same tobacco business for more than a year, and then became embarrassed and afterwards insolvent by reason of the failure of several firms in Chicago to whom they had made large sales of tobacco. It is fair to say that but for the failure of these firms the notes of the new firm of J. R. Harris & Co. would have been

paid, and with them every debt which Williams had ever owed. So that the deed of Williams in February, 1868, would have been *bona fide but for the failure of these firms in Chicago in* 1871, and it is made fraudulent by these failures.

Surely this cannot be, and we insist, as we did in our first brief, that the conduct of Williams all through this period was marked by an earnest desire to pay instead of to defraud his creditors, and the settlement on his wife ought to be sustained against these subsequent creditors that agreed to look primarily to the new firm of J. R. Harris & Co., and only to Williams as security for the firm.

We now proceed to reply to the rejoinder of counsel for appellees.

This rejoinder does not add to what was presented in the brief of counsel for appellees, but confines itself to the third, fourth and fifth errors of our first brief.

The third error we assigned is as follows :

"Because the court decided that *all* the right, title, interest and estate of William Y. Williams and *Sarah C. Williams*, vested in Penfield by virtue of his purchase and deed from the sheriff without saving to the wife her dower in case she survived her husband."

The reply made to this is that Sarah C. Williams "had no such interest in the land as the decree could affect;" "that she had not even a chose in action in respect to the estate, nor is her right in any sense an interest in real estate."

The learned counsel quotes to sustain this opinion, the case of Fuller *vs.* Wright, 18 Pickering, on page 405.

This case turned upon the agreement, and the question was whether the inchoate *right* of dower was an incumbrance within the meaning of defendant's agreement. The court decided it was not. It is true that Judge Shaw does say it is no estate or interest, but only a possibility; whether it was an estate or interest was not the question involved; but whether this inchoate right was an incum-

brance within the agreement of defendant. Further on the Judge says: "But we think no general rule can be laid down to determine absolutely *whether such inchoate right of dower is an incumbrance.*" The Judge does not decide the question involved here.

It is true Wasburne on Real Property, page 250, says this inchoate right of the married woman "is not a chose in action;" but immediately before, on same page, he says: "At common law, the moment her coverture and the husband's *seisin* concur she acquires a *right* which nothing but her death or her voluntary act can defeat," &c.

Moore *vs.* The City of New York, 4 Selden, N. Y. Reports, decided the question "whether lands taken for public uses, under the power of eminent domain, upon payment of their value to the owner in fee, divested the wife's inchoate right of dower." The opinion of the court that it was divested only confirmed the universally acknowledged doctrine that the exercise of this power of eminent domain overrides all private rights, and does not touch the question at issue here.

In the same case Judge Gardner says, the right "of a wife must be a *right* to a claim for dower contingent upon her surviving her husband."

The case of Learned *vs.* Cutter, 18 Pick., 11, cited by the counsel in his rejoinder, turned upon the construction of a deed in which the wife united. It was held that the wife was barred by joining in the deed. Judge Wilde, in delivering the opinion of the court, does say the deed passed no title to the estate, but he also says in the next sentence: "The grant or release of the wife operates by way of estoppel or extinguishment of her *right.*"

So that all the authorities cited in the rejoinder establish that a married woman has a *right*, though inchoate, in the lands of which her husband is seised during coverture.

It is an incumbrance, and is within the operation of the ordinary covenant against incumbrances, (Scribner on

Dower, page 3.) While this was doubted by Judge Story in an early case, in Prescott *vs.* Truman, 4 Mass., 627, Parsons, C. J., in delivering the opinion of the court, says: "On these principles we are of the opinion that right to or interest in the land granted to the diminution of the value of the land, but consistent with the passing of the fee of it by the conveyance, must be deemed in law an incumbrance." "Thus a right to an easement of any kind in the land is an incumbrance. So is a mortgage. So also is a claim of dower."

See also Shearer *vs.* Ranger, 22 Pick., 447.
Jones *vs.* Gardner, 10 John., 226.

But we maintain, on authority, that this is not only a right, but an interest in the estate, and by the tables recognized by the courts its value at date of conveyance may be ascertained.

Bartlett *vs.* Van Zandt and others, 4 Sandf., ch. 396.

In this case the vice-chancellor said:

"At the time of partition Mrs. Margaret Janeway had an inchoate right of dower in all that portion of the lands," etc. . . . "The decree directed the master to ascertain the value of her contingent right of dower." . . . "The master accordingly ascertained such value and reported it to be $560."

In the case of Brown *vs.* Brown, 47 Mo., 130, Judge Bliss, in delivering the opinion of the court, speaks of "the interest" of Mrs. Brown, a married woman, in the lands of her husband.

In the case of Bullard *vs.* Briggs, 7 Pick., 533, which was a settlement by the husband on the wife in consideration of her release of her dower right in husband's land, Parker, C. J., in delivering the opinion of the court, on page 541, says: "We think there is ample authority for adopting the principle that a relinquishment of dower by the wife, living

the husband, is a good and valuable consideration for a conveyance by the husband to the wife of property which may be considered but a fair equivalent."

In the case of Quarles *vs.* Lacey, 4 Mumford, (Va.) Judge Roan, in delivering the court's opinion on page 258, says "that although it is not competent for the husband after marriage to defeat or obstruct his creditors by a sale or exchange of property, and by taking a conveyance of the money or property received therefor to the use or benefit of his wife or family, . . . yet the case may be otherwise in relation to so much of such money or property as goes to compensate the just *interests* of the wife." The just interests of this wife was dower in a lot in Richmond, relinquished by her *in consideration of the settlement.*

See also 1 Rand., 219, Harvey *vs.* Alexander.
2 Rand., 563, Taylor *vs.* Moore.

These cases, and many others that may be cited, establish that the wife's inchoate right to dower is a present interest, the value of which may be estimated, and forms a consideration to support a conveyance from husband to her use, if not in excess of its value.

But in the rejoinder, the counsel for appellees says that the decree in this case cannot have the effect to conclude the wife in an action by her for her dower.

Then why decree "that all the right, title, interest, and estate which said defendants, Wm. Y. Williams and Sarah C. Williams, on the 10th day of March, 1875, had in or to said land, which is described as follows: . . . should, without any further conveyance from said defendants, or either of them, be vested, and accordingly is hereby vested, in said plaintiff, Penfield." This decree vests in Penfield all the right, title, interest, and estate of the wife. It could not be more sweeping, and must be construed to divest the wife of her then inchoate right of dower, if such right was, as the authorities declare, a right or interest which can be

valued and sold and which forms a valid consideration for a settlement by the husband on the wife. The husband is now dead. The case is revived against her administrator, and it is submitted that any effort on the part of the wife to obtain her dower in this land would be resisted by the appellee, Penfield, on the ground that it is *res adjudicata.*

The appellee, Penfield, in his bill on page 4 of record, prays, among other things, as follows: "That she may be decreed to convey the title of the real estate to the plaintiff; . . . also that the title of this plaintiff to the whole interest of the real estate may be quieted; . . . and that the said defendants may be declared to have no interest in the said real estate."

It is submitted that the whole *interest* of Mrs. Williams in this land was involved, and the decree of the court gave it all to Penfield. The decree must be erroneous in this respect even on the concession (made for the purpose of this argument, and none other) that the deed was fraudulent, and conveyed no separate estate to the wife.

But in this rejoinder the complainant's counsel says, in answer to the fourth assignment of error, that there was no homestead exemption in this case, because the deed for this land to Sarah C. Williams was not recorded until December, 1872, and that the debts in the decree mentioned were contracted before that date, the statute giving the homestead only where the deed was recorded prior to existence of debt. The learned counsel maintains that the deed of February 11, 1868, which was put on record at once, and before the existence of any of said debts, did not convey this land. It is a little curious that the whole argument of fraud should have been directed against this deed, if it was absolutely useless in conveying this land. It was treated by counsel for appellees as the deed which conveyed the property, but which was fraudulent, and therefore void. Now upon the homestead exemption it is no deed conveying this property.

It will appear from a comparison of the deeds that the one of the 11th of February, 1868, on page 22 of record, gives the commencement point of the metes and bounds of the tract as follows: "At southwest corner, section 25," etc. That of December, 1871, and which was recorded January 6, 1872: "At southwest corner of the southeast quarter of section 25," etc. This is the only difference in the two deeds, and it appears from the evidence that the words "of the southeast quarter" were accidentally omitted in the first deed. This mistake on the part of the grantors was corrected as soon as it was called to their attention.

But does it affect the validity of the first deed? and does the first deed for that reason fail of its intended object to convey the land of Skinner to Sarah C. Williams?

In Martindale's Law of Conveyancing, at page 76, the doctrine is laid down, with citations to support it, that "The general rule is that if the description of the premises given in the deed is sufficient to identify and ascertain the lands intended to be conveyed, this is sufficient to sustain the conveyance, notwithstanding there may be errors or inconsistency in some of the particulars."

Again, on page 87, § 108, he says: "Where a deed refers to another deed, or a map or survey, it has the effect to incorporate such deed or map or survey into the description, the same as if copied into the deed itself, and *what is therein described will pass.*"

In this first deed, after giving the commencement point, and by mistake making that point the southwest corner of section 25, it says: "At letter D, on county surveyor's plat, No. 124." Now, by the law just quoted, this county surveyor's plat, No. 124, became a part of said deed, and must be looked to for a description of this land as much as if it was incorporated in the deed. This plat, by the provisions of § 7384 of the Missouri Revised Statutes, was required to be recorded by the recorder of deeds, so that the same office that furnished the deed also

furnished the plat, and parties had to look to both for a description of this deed. There could be no mistake when this plat is examined. The letter D is given as the beginning, and starting there and following the courses and distances, the land intended to be conveyed is properly and accurately described.

This land is described as within the town of La Grange, the same section requires the surveyor in town lots to give the distance to houses, etc. If the law of Missouri was complied with, no one could fail to know what land was intended to be and was conveyed by the deed of the 11th of February, 1868. And no court would decide this deed ineffectual to pass this land which had been owned by Skinner.

This mistake is not patent on the face of the deed. There is nothing on its face to show the description, southwest corner, section 25, is not correct. It was a latent ambiguity, and could only appear by resort to evidence outside the deed when this is the case courts will correct the deed in such particulars, and in any case outside evidence may be resorted to to show what was the true intention of the parties conveying the land.

See Campbell *vs.* Johnson, 44 Mo. R., 247.

It seems, therefore, on authority, that the deed of the 11th of February, 1868, by its reference to the surveyor's plat sufficiently described this land notwithstanding the omission of the words of " the southeast quarter " and its recordation was sufficient to give the homestead against creditors not existing at that time. Indeed the deed of 1871 only furnishes the evidence by which the latent ambiquity of the first deed is corrected, and as it could have been furnished by other means, it was not necessary. The courts, on this evidence, would have corrected this mistake, and the deed thus corrected made good from its date.

It was a valid deed to pass this land and from its record-

ation gave the homestead exemption against debts contracted thereafter, which the court below wholly disregarded in its decree.

The counsel for appellees answers the fifth error assigned by saying that the maxim "that he who asks equity must do equity" is sadly out of place in the mouth of appellants. "What equity do respondents owe them?" We reply that no matter how bad the conduct of appellants may have been, if the appellees came into a court of equity to correct it and to compel them to live up to the rules of equity, they cannot have this relief, except on the terms of doing equity. If a borrower of money on usurous interest seek to have the aid of a court of equity to have the instrument cancelled or delivered up, the court will not interfere in his favor, unless upon the terms that he will pay the lender what is really and bona fide due him.

Story's Eq. Jur., § 64*e* and 301.

If the courts apply this doctrine embodied in this maxim to the innocent borrower in favor of the usurer, then the answer of the counsel for appellees is overturned.

As we understand the maxim, it applies to any person seeking equity, no matter what the conduct of the defendant may have been.

We must be permitted, in conclusion, to repeat our assignment of errors contained in our first brief, and to insist that the decree of the court below must be reversed for all and each one of them.

Respectfully submitted.

EPPA HUNTON,
W. H. HATCH,
Counsel for Appellees.

16-260

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 188~~2~~ (1882)

WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS,
Appellants,

vs.

URI S. PENFIELD AND THE FIRST NATIONAL BANK OF QUINCY, ILLINOIS,
Respondents.

No. ~~[illegible]~~ 19

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE, AND BRIEF AND ARGUMENT BY COUNSEL FOR RESPONDENTS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS,
Appellants,
vs.
URI S. PENFIELD AND THE FIRST NATIONAL BANK OF QUINCY, ILLINOIS,
Respondents.

No. 158.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE BY COUNSEL FOR APPELLANT.

This is a suit in Equity to have a voluntary conveyance of land to the wife declared fraudulent and void as against the creditors of the husband. The suit was commenced in the Circuit Court of Lewis County, Missouri, the *situs* of the property in contest, by the respondent, Uri S. Penfield, a citizen of Illinois, against the appellants, William Y. Williams and Sarah C. Williams, who

were citizens of Missouri. The cause was afterwards removed into the United States Circuit Court for the Eastern District of Missouri, pursuant to the act of Congress in such cases made and provided. By leave of the court last named, the First National Bank of Quincy, Illinois, was permitted to join Penfield as a co-complainant, and the two to file an amended Bill, and to make the LaGrange Savings Bank of LaGrange, Missouri, a defendant with Williams and Williams, the original defendants.

[The amended Bill is found on pages 18 to 22 of the printed record, corresponding to pages 31 to 45 of the manuscript record, as the latter paging is indicated in the margin of the printed record.]*

The Bill charges, substantially, that the appellant, William Y. Williams, was largely in debt and had but little property, and was insolvent, and that so being, he on or about the 11th of February, 1868, purchased from one James H. Skinner a tract of land containing 42 acres—the tract in controversy, in the corporate limits of the City of LaGrange, for the price and sum of four thousand eight hundred dollars, and caused the said Skinner to seal and deliver a deed of that date to Sarah C., the wife of the said William Y., for the conveyance and transfer of said tract to her, the said Sarah C.; that he, the said William Y., paid the purchase money from and out of

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his own estate; that the property so purchased having been misdescribed in said deed, the said William Y., for correction thereof, procured said Skinner to make a new deed in December, 1871; that at and prior to the time of said purchase and conveyance, the said William Y. was in debt both to the Quincy Bank and the LaGrange Bank, and to others, in divers large sums of money, and that said debts still remain unpaid; that at the time of said purchase and conveyance said William Y. (Rec., 33) "was engaged in the business of buying, manufacturing and selling tobacco, and was expecting and intending to continue in said business—a business subject to many and great risks and hazards, and known to him to be so, and was expecting and intending, as occasion might require, to borrow money and contract and incur debts and liabilities in the prosecution of his business," and that he, the said William Y., made the said purchase and procured the said conveyance "intending to provide and for the purpose of providing a home for himself and family, and of placing it beyond the contingencies of adverse fortune in business, and out of the reach of his creditors, existing and prospective, and with intent to hinder, delay and defraud his creditors, existing and future; that (Rec., 36) the said William Y., in accordance with his said purpose, did engage in said contemplated business, and continued therein until about the year 1871; and in the prosecution thereof contracted numerous debts and liabilities, many of which remain unpaid; that for certain debts which he owed to the Quincy Bank, that Bank sued and recovered three judgments, (described therein) in the Circuit Court of Lewis County—the court having jurisdiction—aggregating $26,814.25, besides costs; and that for certain debts owing the LaGrange Bank, that Bank sued in the same court, and recovered two judgments (described therein) against the said William Y. and his co-promissors, aggregating $6,035.76, besides costs; transcripts of

said several recoveries accompanied, and were made exhibits in said bill; that the said several recoveries were of debts contracted prior to said purchase from Skinner, the payment of which had been extended from time to time by renewal notes given by said William Y. and his co-promissors; that said judgments, less two credits aggregating $35, made on execution, remain unsatisfied; that in December, 1874, executions were duly issued on said several judgments, and placed in the hands of the sheriff of Lewis County, who thereupon duly levied the same upon all the right, title, interest and estate of the said William Y. in and to the property so conveyed to the said Sarah C., and afterwards, in due form of law, sold, and by a sheriff's deed, conveyed the same to the respondent, Uri S., and returned the executions *nulla bona*.

It is further stated in the bill, that immediately upon said purchase from Skinner, the said William Y. entered into possession of, and, with his family, took up his abode on said tract of land and ever after held and possessed the same, and denied to the respondents and other creditors any rights therein; that after said purchase from Skinner, and after the conveyance to the said Sarah C. (Rec. 4) the said William Y. being largely in debt and hopelessly insolvent, and in expectation of contracting future debts, with intent to hinder, delay and defraud his creditors, existing and future, and for the purpose of placing his property and estate out of the reach of his creditors, and in such position as that he and his family might use and enjoy the same in defiance of his creditors, existing and future, he, the said William Y., with the knowledge, consent and approval of his said wife, made and put upon said tract of land, divers valuable and permanent improvements, that is to say: he erected and built an elegant, spacious and valuable brick dwelling house, a large barn, and a number of useful and needful

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS, *Appellants*, *vs.* URI S. PENFIELD AND THE FIRST NATIONAL KANK OF QUINCY, ILLINOIS, *Respondents.*	No. 158.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE BY COUNSEL FOR APPELLANT.

This is a suit in Equity to have a voluntary conveyance of land to the wife declared fraudulent and void as against the creditors of the husband. The suit was commenced in the Circuit Court of Lewis County, Missouri, the *situs* of the property in contest, by the respondent, Uri S. Penfield, a citizen of Illinois, against the appellants, William Y. Williams and Sarah C. Williams, who

were citizens of Missouri. The cause was afterwards removed into the United States Circuit Court for the Eastern District of Missouri, pursuant to the act of Congress in such cases made and provided. By leave of the court last named, the First National Bank of Quincy, Illinois, was permitted to join Penfield as a co-complainant, and the two to file an amended Bill, and to make the LaGrange Savings Bank of LaGrange, Missouri, a defendant with Williams and Williams, the original defendants.

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his own estate; that the property so purchased having been misdescribed in said deed, the said William Y., for correction thereof, procured said Skinner to make a new deed in December, 1871; that at and prior to the time of said purchase and conveyance, the said William Y. was in debt both to the Quincy Bank and the LaGrange Bank, and to others, in divers large sums of money, and that said debts still remain unpaid; that at the time of said purchase and conveyance said William Y. (Rec., 33) "was engaged in the business of buying, manufacturing and selling tobacco, and was expecting and intending to continue in said business—a business subject to many and great risks and hazards, and known to him to be so, and was expecting and intending, as occasion might require, to borrow money and contract and incur debts and liabilities in the prosecution of his business," and that he, the said William Y., made the said purchase and procured the said conveyance "intending to provide and for the purpose of providing a home for himself and family, and of placing it beyond the contingencies of adverse fortune in business, and out of the reach of his creditors, existing and prospective, and with intent to hinder, delay and defraud his creditors, existing and future; that (Rec., 36) the said William Y., in accordance with his said purpose, did engage in said contemplated business, and continued therein until about the year 1871; and in the prosecution thereof contracted numerous debts and liabilities, many of which remain unpaid; that for certain debts which he owed to the Quincy Bank, that Bank sued and recovered three judgments, (described therein) in the Circuit Court of Lewis County—the court having jurisdiction—aggregating $26,814.25, besides costs; and that for certain debts owing the LaGrange Bank, that Bank sued in the same court, and recovered two judgments (described therein) against the said William Y. and his co-promissors, aggregating $6,035.76, besides costs; transcripts of

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It is further stated in the bill, that immediately upon said purchase from Skinner, the said William Y. entered into possession of, and, with his family, took up his abode on said tract of land and ever after held and possessed the same, and denied to the respondents and other creditors any rights therein: that after said purchase from Skinner, and after the conveyance to the said Sarah C. (Rec. 4) the said William Y. being largely in debt and hopelessly insolvent, and in expectation of contracting future debts, with intent to hinder, delay and defraud his creditors, existing and future, and for the purpose of placing his property and estate out of the reach of his creditors, and in such position as that he and his family might use and enjoy the same in defiance of his creditors, existing and future, he, the said William Y., with the knowledge, consent and approval of his said wife, made and put upon said tract of land, divers valuable and permanent improvements, that is to say: he erected and built an elegant, spacious and valuable brick dwelling house, a large barn, and a number of useful and needful

outhouses; he enclosed the tract with a good and substantial fence; he planted out numerous fruit and ornamental trees and vines and shrubs, and opened up and reduced the tract to cultivation, at an aggregate cost of not less than $11,000, all which he paid for out of his own resources, and with his own money, and not from the resources or with the money of the wife, to the great wrong of his creditors."

And it is further charged (Rec. 42) that the conveyance of the property to the wife was voluntary, and without a valuable consideration moving from the wife, and was accepted by the wife with notice of the husband's fraudulent purposes, and that she had combined and confederated with the husband to defraud his creditors. The oath of appellants to the answer was waived.

To this bill the appellants exhibited their "joint and several" answer. (Record from 215 to 224.) The answer avers (Rec. 215-16) that on the 11th of February, 1868 (the date of Skinner's first deed), the appellant, William Y. was indebted *not exceeding* $1,500, and that that had all been paid, or *nearly so*, before he contracted the debts on which the judgments mentioned in the bill were recovered, and that he then owned unencumbered real and personal property, exclusive of the property in controversy, of the value of $12,000 and over; and that "at the time he purchased said land and made the improvements thereon the said William Y. was worth in property, situate in said Lewis county, Missouri, in his own right and name, of the value of twelve thousand dollars and more, *over and above* all of his *then existing debts* and liabilities" and was not then insolvent. The answer then proceeds (Rec.

216-17): "These defendants, further answering, say, that prior to said 11th day of February, A. D. 1868, and on or about the 20th day of September, A. D. 1867, he (William Y.) purchased twelve acres of said land for an agreed price and sum of eighteen hundred dollars, and that afterwards and on or about the said 11th day of February, A. D. 1868, said William Y. Williams, being the owner of a house and three lots in the city of LaGrange in said Lewis county,—the same then being of the value of three thousand dollars or thereabouts; and then being desirous of purchasing the remainder of said land (the rest of said forty-two acres) it was agreed between the said William Y. Williams and James H. Skinner, then the owner of the same, to exchange said house and lots for said remainner of said land; and thereupon these defendants caused the said house and lots to be conveyed to the said James H. Skinner; and that at the time of such conveyance the said William Y. Williams was a householder, the head of a family and resided with the same in the said house as and for his and their homestead, such family consisting of the defendant, Sarah C. Williams, his wife, and four children of theirs; that the object and purpose of making said purchase of land was to procure another homestead, the location of which would be more desirable than the one which they then resided in, and for no other purpose; and that for the consideration aforesaid and at the instance of the defendant, William Y. Williams, for the purposes aforesaid and none other, said land was conveyed to his said wife, the said Sarah C. Williams, by the said James H. Skinner."

It is then stated that in the early part of the year 1868 said William Y. commenced the erection of a dwelling house upon the land in dispute and partially completed the same during that year, "and moved into said house together with his said family in the latter part of

said year and completed said house during the year following," and that defendants and their family have ever since occupied and do still occupy said house and premises.

It is further stated (Rec. 218) that said William Y. realized from $1,000 to $1,200 net from timber which stood on said land at the time of its purchase, the greater portion of which was used in paying for the building of the dwelling house. The answer admits that, besides the dwelling house, the said William Y., during the years 1868 and 1869, erected out-buildings and made other ordinary improvements on the premises, such as are necessary for the convenient use of a homestead, at a cost of $7,000 or thereabouts.

It is then denied that the transfer to the wife was made with the fraudulent intent charged in the bill, but it is affirmed (Rec. 219) that the same was made "solely for the purpose of procuring another and more desirable homestead for *these defendants* and their family."

Again, it is alleged (Rec. 219) that, after payment for the land and improvements thereon, the said William Y. was, in the opinion of the defendants, worth from *seven to eight thousand dollars* over and above all debts existing and contemplated, in unincumbered real and personal property in Lewis County. In respect to the indebtedness to the Quincy Bank, (Rec. 219) the answer is not a denial that Williams was the Bank's debtor at the time of the purchase and improvement of the property in question, but it is an affirmation that the then existing indebtedness had been paid before the recovery of the judgments mentioned in the bill, and that that indebtedness did not enter into said judgments.

The answer says (Rec. 220–21) that the deed of 11th February, 1868, misdescribed the property, and that for the correction of the error, Skinner, at the instance of

William Y., sealed and delivered the deed of the 13th of December, 1871, and that both deeds were promptly recorded in the proper office.

In respect to the business of William Y. and to his incurring debts, the answer is as follows: (Rec. 222) "These defendants further answering, say that it is true, as alleged in said bill, that the said William Y. Williams was in the business of purchasing, manufacturing and selling tobacco at the times of said purchase of said land from said Skinner, and that he continued such business for some time thereafter, the precise time they can not now state, and did during such period contract some debts, precise amount of which they can not now state."

The recovery of the several judgments described in the bill, and for the amounts and at the times stated, is expressly admitted, (Rec. 222) but it is denied that such recoveries were of any debt existing or contemplated at the time of said purchase from Skinner and the making of said improvements, but of debts contracted subsequently to the execution and recording of the deed of 11th February, 1868. The answer then proceeds to express the ignorance of the defendants (Rec. 223) as to whether the judgments or any part of them have been satisfied, or as to whether executions had ever been issued for the enforcement of the judgements or any of them, or if issued, whether the same had been levied, or as to whether the land in question had ever been sold, or attempted to be sold under said executions, if executions were in fact issued, or as to whether any deed had been made by the sheriff for said land to said Uri S. Penfield. It is also alleged in the answer (Rec. 224) that William Y. was but surety for others on the notes on which the judgments were recovered. Then, with a general denial of everything charged against the defendants of an important sort, the answer closes.

The LaGrange Bank answered separately, confessing the allegations of the bill. (Rec. 482–3.

The respondents (complainants below) put in a general replication to the answer of the appellants, (Rec. 230–31) and thereupon the Circuit Court proceeded to a hearing upon the pleadings and proofs in the record, and upon the hearing found the issues for the complainants and decreed accordingly, vesting the title to the property in controversy in Penfield, in trust for the two Banks, and awarding him the possession. And Williams and wife appealed to this court.

A brief preliminary survey of the facts, as they appear in the record, may aid the Court in apprehending the testimony and in applying it to the questions that arise in the case.

Mr. Williams was a witness in the case, in behalf of himself and wife. He gave his testimony in Dec., 1877, within forty rods of the spot where all his business operations had been carried on. He was at that time 51 years of age, (Rec. 316) and was the husband of his co-defendant, whom he had married in 1848; and was the father of five children, and had been a housekeeper for five and twenty years. (Rec. 306). He began life a farmer, in Lewis County, and pursued that vocation from 1847 till 1856. From March, 1857, till the spring of 1866, he was a merchant, dealing in general merchandize, in the village of LaGrange, Missouri. From the spring of 1866 till the summer of 1870, he was a dealer in and manufac-

turer of tobacco, in the same village. From 1870 and afterwards his time and talents were devoted to the care of his household, and the cultivation and management of his farm. (Rec. 317). During his career as merchant, he had four partnerships—*first*, with Richardson; *second*, with Simpson; *third*, with Sam. H. Williams, and *fourth*, with Quisenbury, (Rec. 317).; the last of which terminated in the spring of 1866. (Rec. 357). When he separated from Quisenbury he carried away with him, according to Quisenbury, between *four* and *five hundred dollars*, (Rec. 239, 240), and according to Williams himself, an uncertain amount—possibly more than five hundred dollars. (Rec. 357–8).

He had five partnerships in the tobacco business; the *first*, with Wakefield and Moon, from the spring of 1866 till the latter part of the same year; the *second*, with Wm. B. Mann, from December, 1866, till the fall of 1867; the *third*, with Robert N. Blackwood, from early in the year 1868, till the year 1869; the *fourth*, with Blackwood and Simpson during the year or the working season of the year 1869, and the *fifth*, with said Blackwood and Simpson and one Jacob Harris, from the spring of 1870 until August of that year. (Rec. 318).

Going back to the spring of 1866, when he engaged in the business of buying, manufacturing and selling tobacco in partnership with Wakefield and Moon, we find his whole estate consisted of the little remnant of four or five hundred dollars left of his partnership with Quisenbury; (Questions 5, 6 and 7, printed R. 92); a little dwelling house and three lots in the town, (the title to that was in another, (Rec. 310–12), worth between two and three thousand dollars; an undivided one-eighth interest in 48 acres of unimproved prairie land, worth (his share) not exceeding twenty dollars; his household furniture and, possibly, a cow and a horse.

What success that co-partnership—the co-partnership

of Williams, Wakefield and Moon—met with, is by no means clear, but there is one fact in the record which goes far to show that their net gains, if anything, must have been inconsiderable. The fact alluded to is that as late as February 11th, 1868, the firm was in arrears to the Government for taxes, for over $2,000, perhaps $3,000. (Rec. 354–5—also last answer on side p. 404.)

The succeeding firm of Williams and Mann, formed in December, 1866, began business evidently with a limited capital. We find that they bought property in the town for the purposes of their business, but such was their financial condition, that they were compelled to buy on credit. A balance of the purchase money of this, amounting to two thousand dollars or more, was still unpaid in the early part of the year 1868. (Rec. 326). It was at about the close of this co-partnership that Williams made the contract with Skinner for the purchase of the land in dispute. The purchase was made in Williams' own name. The transfer to his wife was an after-thought, (Rec. 398 and 405–6) suggested by the Wakefield complications, and moved by a sense of the dangers and perils of trade. The price paid to Skinner was $1,800 in money and the three town lots already mentioned, with dwelling house thereon, of the estimated value of $3,000. The $1,800 was drawn from the co-partnership funds of Williams and Mann. (Rec. 332.)

All the property which Williams had, or claimed to have, remaining after the settlement on the wife, was (Rec. 320) the undivided half of the tobacco factory, known as the Globe Tobacco Works, located in Lagrange, with the machinery, fixtures and appurtenances, stock on hand and working capital; also the undivided one-eighth of the 48 acres of wild prairie; and, possibly a cow and horse, and his household furniture. During the existence of this partnership, the interest of Mann in the partnership property was seized by the Government for

frauds committed elsewhere, and, in January, 1868, was sold at auction, and Mr. Blackwood, the next succeeding partner of Mr. Williams, was the purchaser. (Rec. 335.)

At the very moment Mr. Williams was giving his order to Skinner for the conveyance, he was resolved upon trade. Blackwood had just acquired Mann's undivided interest in the tobacco works, and a partnership agreement between Williams and himself, for the prosecution of the business of buying, manufacturing and selling tobacco, had already been entered into, or if such agreement had not then been reached, it was in contemplation, and was immediately thereafter consummated. That firm, (as did all of its successors) in its inception contemplated the creation of debts and the raising of money by loans and discounts, and it, (as did its successors) practiced, in that regard, all it contemplated.

There was no time, after the year 1867, when Mr. Williams was not indebted to the LaGrange Bank, and it will appear that a large part of the demand on which one of the judgments of that Bank was recovered, was a debt of Mr. Williams, existing anterior to the settlement in question. It will also appear that all of the debts comprehended in the judgments of the Quincy Bank, were contracted in the lifetime of Mr. Williams' last co-partnership, and by that co-partnership, and for money lent to that partnership: and that at the time of the settlement, Williams was largely in debt, and greatly embarrassed in his pecuniary affairs.

In August, 1870, Mr. Williams and Mr. Blackwood traded their interest in the Globe Tobacco Works belonging to the firm, to one of their partners, Mr. Harris, for certain real estate in Quincy, Illinois, and withdrew from the firm; (Rec. 327-8) both having previously made ample provision for their wives.)Questions 1 to 10, Rec 288 to 290).

At the time of the conveyance to Mrs. Williams, the

land conveyed was wild and unimproved; but during that year (1868), and the three succeeding years (1869, 1870 and 1871), her husband, following out the original design of the purchase, cleared it and erected thereon, a costly and elegant dwelling house, barn, and other permanent and valuable improvements; and, in doing so, expended large sums of money, ranging from seven to ten thousand dollars in amount, all of which, except a comparatively small sum, realized from wood taken from the premises, were contributions by Mr. Williams from the gains and acquisitions of the several co-partnerships with which he was connected in the years just named.

Mr. Williams says (Rec. 314) that "his object in *purchasing* and improving said land, was for a permanent home for his family," and (next question) that he, with his family, moved into the property in December, 1868.

The severance of his connection with the firm of J. R. Harris & Co., in August, 1870, forever ended Mr. Williams' business career. (Rec. 319).

Though in the prime of his manhood, being but four and forty years old, forgetful of the duties and obligations he owed to his creditors, whom he had so cruelly despoiled, and whom he was still capable of being useful to, he puts all business behind him: and he coolly, and apparently without a pang, tells us, in the role of witness, (Rec. 317) "since 1870, my time was principally devoted to work on the place on which I now live;" and again, (Rec. 308) "my time is engaged in cultivating my piece of ground, fruit trees, etc.—is all the employment I have." He confesses that he is law-proof, (Rec. 315–16), and yet he makes no attempt to show why. Losses after the settlement are not pretended, yet the debts of himself and the firms with which he was connected, are counted by the tens of thousands, and nothing visible with which to pay.

The husband's poverty finds an all-sufficient explana-

tion in the wife's wealth. A like explanation may be found for the insolvency of two, at least, of his partners. Mr. Blackwood, like Mr. Williams, has gone down, but before going, he was careful to make ample provision for his wife. (Rec. 288–9). And Mr. Simpson, though discharged from his debts by force of the bankrupt law, (Rec. 446, ques. 115) is nevertheless the master of an establishment. (Rec. 294, ques. 23).

Thus, from being the occupant of the humble abode on three little town lots, struggling against poverty and debt, and the perils of trade, Mr. Williams, in the short space of two and a half years, sheltered by the capacious, benign and subservient skirts of a wife, becomes the inhabitant of a luxurious home, the possessor of an estate whose extent and resources give him the most undoubted assurances of exemption from want, and from the apprehension of want, all the rest of his days—all compassed by craft, and by the sacrifice of his creditors.

BRIEF AND ARGUMENT.

That the settlement which lies at the base of this controversy was purely voluntary, is not really a matter of dispute in the case. The answer to the bill practically admits it, and if there was any doubt on the point, the doubt would be effectually removed by the testimony of the settler himself, delivered from the witness stand. And hence, in the consideration which we shall give to questions in the case, we will assume that it stands admitted that the settlement was of that character.

I.

The testimony in the case proves that at the time of making the settlement in question (11th February, 1868), Williams, the settler, was deeply in debt, and greatly embarrassed in his pecuniary affairs, if not wholly insolvent.

In discussing this proposition, we will inquire, *first*, what debts did the settler owe at the time? and, *second*, what property had he which was subject to the payment of his debts?

1st. As to his indebtedness:

In the answer to the bill, (Rec. 215) it is confessed that the settler was indebted, but the amount is placed within the limit of $1,500. On the witness stand, however, the settler is obliged to make large changes in his figures. In answer to a question propounded by his own counsel, as to whether he owed debts, and the amount thereof, he says (Rec. 325) "I was indebted some; can not say just how much, but think the amount would not exceed $2,000, *except* the last payment on the tobacco factory, which was either paid at the time or some time after." The last payment here alluded to was afterwards (Rec. 338) shown to be $2,000. This was all of the indebtedness he thought of mentioning in his examination in chief. On the cross-examination, it was brought to his mind that Wakefield, a former partner, had absconded, leaving him, Williams, and his sureties on his bond, to pay the Government tax on the firm's tobacco. (Rec. 853). On being asked the amount of the Wakefield liability, (Rec. 354) he answers, "I do not remember the exact amount, but was something *more* than $2,000. (Ques. Rec. 355) "Was it as much as $3,000?" Ans. "*I can not say.*"

This liability was certainly upon him on and after a late date in December, 1867, for Mr. Skinner, a witness in behalf of the plaintiff in error, testifies (Rec. 404) that a a few days before the note of Williams to the witness, maturing the 20th December, 1867, became due, Williams came to him and told him that he might not be able to pay at maturity, "that Mr. Wakefield had run off and left him some debts to pay, and that he didn't know how bad he had got him yet." * * * * * * The day Williams paid the money, witness asked him "how bad Wakefield had got him, or if he *knew how bad* he had got him, and he said *he did'nt know the amount*, but he did'nt think it was as bad as he first thought." This liability was not only upon him, but the amount was unascertained very shortly before the settlement, and it continued upon him till the time of the settlement, unless previously paid. Had it been previously paid? Let Mr. Williams himself answer. The last question his counsel propounded to him (Rec. 385) is, "When was the same" (the Wakefield liability) "paid?" Ans. "*I do not remember distinctly*, but it was in the *early part* of the year 1868." Surely this will not be held to be proof of prior payment. It ought not to be so held, because the witness does not say the payment was prior; but especially should it not be held in this case, where it is within the power of the witness, by a resort to his books and vouchers, to make the fact clear beyond all peradventure.

I. B. Alverson, President of the LaGrange Bank from its organization in 1866,—testifying in St. Louis, in the absence of the books of the Bank, says, in answer to question 1, (Rec. 299) that Williams & Co. kept an account with his Bank (continuously) from 1867 till August 1870, and were at all times between those dates indebted in a greater or less amount to the Bank.

It also appears by Mr. Williams' own testimony, that

the firm of Williams & Mann, which had just closed, was in the habit of borrowing money (Rec. 338–9) in their business, and it is shown by Mr. Alverson, President of the LaGrange Bank, (Re-cross, ques. 3, Rec. 301–2) that within three months next preceding the conveyance from Skinner, Williams & Mann discounted in that Bank, paper running from 60 to 120 days, amounting to $21,000. The witness was unable to state how much of this paper was unpaid at the time, but it is manifest that a large amount of it was. It is thus perfectly apparent that at the time of the settlement the liabilities of Mr. Williams mounted up to certainly over six thousand dollars, probably to seven thousand; and possibly to many thousands more of moneys borrowed on firm account.

We enquire next—

2nd. What property had Mr. Williams at the time of the settlement, aside from that covered by the settlement?

This question was answered by Mr. Williams himself, being first charged by his counsel to answer it "*carefully and fully.*" His answer is as follows: (Rec. 219–20) "I owned at that time one half undivided interest in the tobacco factory known as the 'Globe Tobacco Works,' located in LaGrange, * * Missouri, including all machinery, fixtures, and appurtanances, stock on hand and working capital; also, the undivided eighth part of 48 acres heretofore referred to; I believe I also owned at that time a cow and horse, and my household furniture."

His cow and his horse, (if cow and horse he had), and his household furniture, were all, by the law then in force, exempt from execution for debt. (Gen. Stats. of Mo. of 1865, § 9 & 11, Ch. 160.) His undivided interest in the 48 acre tract never had value enough to provoke a creditor to levy upon it. He owned it, as we have just

seen, at the time of the settlement in February 1868, and he still owned it, (Rec. 315) in December 1877, when he gave his testimony, though insolvent he had then been for seven years. For any purpose, therefore, of security to creditors, the cow and the horse and the household furniture and the interest in the wild land must be accounted as nothing. The remainder of his possessions, whatever they amounted to, consisted—according to Mr. Williams—*first* of the *tobacco works and appurtenances*, *second* of the *stock on hand*, and *third*, of the *working capital*. What were they worth? Mr. Williams, testifying as to their value as a whole, or as to the value of his interest in the whole, says: (Last ques. and ans. on p. 321 of Rec.) "I should think at that time it would be worth from ten to twelve thousand dollars, I mean my interest." His estimate, however, is greatly exaggerated, as the testimony in the case plainly shows. The valuation comprehends seven thousand dollars, or *thereabouts*, as the value of the tobacco works and appurtenances. He says (Rec. 320–21) his half of the building, machinery and fixtures cost about seven thousand dollars, "but I suppose that the cash value at the time referred to (11th February, 1868,) would *hardly* be worth so much." He, however, clearly meant to be understood as saying there was no material difference between first cost and the then cash value. And yet, in the face of this valuation, he was obliged to confess, on cross examination, that a like interest with his own,—that of his partner, Mr. Mann—in the same realty, machinery and fixtures, inclusive of stock on hand, was sold by the Government, at public auction, to highest bidder, only a month before; and that it brought at that sale from twenty-five hundred to three thousand dollars, only. (Rec. 334–5). Tried, then, by the best test of the value of property—a regular sale at public auction—certainly the best test of its value for the purposes of debt-

paying. (Parrish vs. Murphree, 13 How. (U. S.) R. 100). Mr. Williams' estimate of the tobacco works, machinery and fixtures is excessive, by from four thousand to four thousand five hundred dollars. So much for the value of this class of the property. Next, as to *stock on hand*. What did that amount to? Nothing! literally nothing, as Mr. Williams himself is forced to admit on his cross-examination. Mr. Blackwood, having succeeded to the rights of Mann in the tobacco works, machinery and fixtures, and *stock on hand*, (Rec. 335) by purchase at the Government sale, he and Mr. Williams soon thereafter formed a co-partnership for the continuation of the business that had engaged the previous firm, and the new firm opened books. (Rec. 343). The witness, Mr. Williams, having spoken of entries in the books of the "working stock or capital used by" the concern, and being asked (Rec. 344) "of what the working stock or capital of which he had just spoken consisted," answered that it consisted "of money paid in the concern by each of us, and what *stock or material* that was on hand from the old firm of Williams and Mann; do not remember how much stock there was;" and being further interrogated as to whether the material or stock on hand, of which he had just spoken, was at all considerable, he answered "IT WAS NOT."

The third and remaining element of the "ten to twelve thousand dollars" valuation was the witness' share of the working capital. By "working capital" is meant the cash contributed by the partners, and used by the firm in carrying on its business, in contradistinction to contributions of houses, machinery, fixtures and the like. What Mr. Williams' share of the working capital amounted to at the time of the settlement, is a matter of the extremest uncertainty. He is the only witness who testified on this subject, and his testimony is so evasive, conjectural and

indeterminate, that no degree of credence can safely be placed upon it. Had he seen fit to resort to the books of the concern, which, beyond doubt, were completely accessible to him, (Rec. 333) he could have stated the truth with absolute certainty. But books did not suit his purpose; he "had no use for them." (Rec. 333). He preferred to trust the decision of the issue to the chances of blind surmise. On the subject of his contributions to the capital, he was questioned, and he testifies as follows: (Rec. 339). Ques. "How much capital did you put into the concern of Williams and Mann? "Ans. "I do not now *remember;* at first the amount was not large, but we both put in money from time to time, as we could, which was properly credited to each." Q. "Were the amounts put in by you equal?" A. "We aimed to put in equal amounts. The early part of the year I think, perhaps, Mr. Mann put in more than myself." Q. "How much did you put in in the beginning yourself?" A. "I DO NOT KNOW." Q. "Can you approximate it?" A. "I CAN NOT." * * * * * * * * * (Rec. 340). Q. "How much capital did you put in during the whole period of your partnership with Mann?" A. "I CAN NOT REMEMBER, but I know it was SEVERAL thousand dollars."

Not only did he pay in, but from time to time he drew out moneys from the concern. But the same indefiniteness characterizes his testimony in respect to the amounts he drew out, as marked that in respect to what he paid in. When asked (Rec. 341) whether he had not drawn out money other than the two sums of $900 each, paid to Skinner, he answers: "I *suppose* I did, small amounts from time to time, as also did William B. Mann." Whatever doubts, however, may environ the question of how much Mr. Williams paid in, or how much he drew out, the testimony makes it reasonably certain, that, before the day of the settlement, he had not only

drawn out substantially all of the money he had had in the co-partnership, but that *he had already consumed* what he had thus drawn.

Mr. Williams testifies (Rec. 335–6) that he never had any settlement of partnership accounts with Mr. Mann after the dissolution of the co-partnership, (which occurred about January, 1868), because "the business was about *settled at that date*;" that both parties were familiar with the books, "and knew how the matter stood." And being asked (Rec. 341) whether the amounts drawn out by himself and Mann were not about equal, he replied; "During the whole term of partnership I think he drew more than myself: how much more I could not say precisely; several hundred dollars though." Thus it appears that, at the time of the dissolution, the cash assets of the concern had been drawn out and disposed of—that all not drawn out by Mann was drawn out by Williams himself; and further, (Rec. 341) that the sums drawn by him, in addition to what was required to pay Skinner, were "small amounts," drawn from time to time, "*as necessity required* for a living." If drawn from time to time, as necessity required *for a living*, the inference is irresistible that all that had been drawn by force of this necessity was consumed as fast as drawn, and prior to the settlement.

The inference deducible from the evidence, that at the time of the settlement, Mr. Williams was without cash resources, is strengthened by the probabilities of the case. Less than two years before—in the spring of 1866—he had retired from the little mercantile co-partnership of Quisenbury and Williams, with a capital of four or five hundred dollars all told. (Rec. 240 and 357-8). His first adventure in the tobacco trade was with Wakefield and Moon, and there is nothing to show that it was especially successful. About all that has been heard of it is a tax liability of one of the parties, to the Govern-

ment for over two thousand, perhaps three thousand dollars, falling on the head of Mr. Williams. His next adventure was with Mr. Mann, and it is plain that he entered the co-partnership with him with empty pockets. Their tobacco works were bought on credit or partly so. His contributions to the capital at the first were small, (Rec. 339) because unable to contribute more. He put in money "from time to time *as he could*." All he had was in the concern, for he declares (Rec. 341) that he was under the necessity of drawing from the firm *for a living*. Again, his impecuniosity at the time of the settlement is confirmed by his conduct and condition immediately following. In the spring of 1868, the new firm of Williams and Blackwood began business. Blackwood confessedly had no money. The burden, therefore, of furnishing the needed "working capital" rested upon the shoulders of Mr. Williams. If he is a man of money, now is the time to prove it. Work is about to begin, and money is required on a large scale to inaugurate and carry on what we are to be made believe is an immense business. Money he pays in, but how much? He answered, with his usual indecisiveness, (Rec. 347) "*I do not remember.*" * * * * * Q. "Can you state whether your credits for cash capital paid in at the time was as much as one thousand dollars?" A. "I *think* it was more than that by the time we commenced work." Q. "*How much more?*" A. "*Can not now say.*"

But whatever was the amount thus paid in, whether great or small, whether a thousand dollars, or more, or less, there is nothing in the evidence to show that this or any other money, if any, contributed to the working capital of this firm, was the same which had been employed in the preceding firm. On the contrary, it expressly appears that it was not the same, but was money drawn from other sources and raised by other means; namely, upon the *credit* of Mr.

Williams. Thus, the witness having just stated (Rec. 371) that his partner had contributed some uncertain amount to the working capital ($100 or some such amount,) he was asked, on cross-examination:

Q. "Then I understand you that all the capital in that firm, or nearly so, was furnished by yourself?" and he answered: "A large part of the working capital was furnished by me UPON MY CREDIT."

Mr. Wiliams is here reinforced by Mr. Alverson, who testifies (Rec. 280) that during all these years "the man was trading largely on *borrowed capital*."

If he had had the cash capital in the dissolved concern, which he would now have us believe he had, would he have suffered it to lie there unemployed and unproductive, and imposed upon his *credit* the burden of raising the money needed by the new firm? He brought no money from the old to the new concern, because he had none to bring. He relied upon his credit to supply the requisite capital, because he had no other resource.

And thus the conclusion is reached that the only property of which the settler was possessed at the time of the settlement, subject to his creditors and not covered by the settlement, was his undivided interest in the Tobacco works, machinery and fixtures; and that the real value of that interest was only twenty-five hundred or three thousand dollars. If this conclusion be just, then, since the indebtedness of the settler at the time, as we have seen, (*Ante*, **17**), amounted to not less than $6,000, probably to $7,000, and possibly to many thousands more, his insolvency is placed beyond dispute.

But if it were conceded that he in fact had a working capital of $3000, (the difference between his valuation of the tangible property—$7,000—and his minimum valuation of the whole property—$10,000), the result would be the same,—his debts would still be in excess of his

property. Or if his maximum valuation, ($12,000), be accepted, and $5000 of that sum be put to the account of working capital, and be added to the actual value of the tangible property, even then, his debts, if exceeded at all by his property, are exceeded by a most precariously narrow margin. At best, one so situated would be accounted as being greatly embarrassed in his pecuniary affairs.

II.

A voluntary settlement made by one who is insolvent, or who is considerably in debt is, presumptively, fraudulent and void, as against existing creditors of the settler.

Sexton vs. Wheaton, 8 Wheat., 229. (5 Cond. R. 424).
Hinde's Lessee vs. Longworth, 11 Id., 199.
Patten vs. Casey, *et al.*, 57 Mo., 118.
Smith vs. Smith, 11 N. H., 460.

As it already appears that the settlement in this case was voluntary, and that the settler was insolvent, or at least heavily in debt, to give application to the proposition of law first announced, it only remains to show that the complainant, or one whose place he occupies, was a creditor of the settler at the time of said settlement: and this we proceed to do.

One of the judgments of the LaGrange Bank, under which the Sheriff's sale of the property in controversy was effected, was based on a promissory note made by Simpson, Williams and Blackwood, for $1,635.25, found at large on page 63 of the printed Record. Mr. Alverson, the President of the LaGrange Bank, and a witness for

complainants, testified (Ques. 31, Rec. 282-3) that in the note just mentioned was merged another note, given to the Bank in 1866 or 1867, by the same parties, of which last mentioned note there was a balance of eight or ten hundred dollars remaining unpaid at the time of the merger. Mr. Alverson frankly and of his own volition, admitted on his examination in chief, that Mr. Simpson, in a conversation with him on the subject, had expressed the belief that Mr. Williams was not a party to the merged note. But notwithstanding the contrary opinion expressed by Mr. Simpson, the witness, as well in chief as on cross examination, (Rec. 286–7), firmly adhered to what he had first testified: and, as confirmatory of what he had thus said, he further testified, (Rec. 299–300), that Wm. Y. Williams & Co. kept an account with his Bank, continuously, from 1867 till August 1870, and that there was no time during that interval that they were not indebted to the bank in a greater or less amount.

Mr. Williams had already been examined: and he had been asked generally whether any of the indebtedness upon which the judgments were recovered, antedated the settlement. His answer (Rec. 329) was characteristic— "*Not that I know of.*"

After this direct testimony to the specific facts of antecedent indebtedness, it behooved Mr. Williams to take the witness stand and tell what he knew. Yet he did not, and why? Was it not because conscious of their truth, he could not gainsay the facts proved? His failure to present himself was a tacit confession of guilt.

The facts themselves are probable, and coming, as they do, from a credible source, and not being contradicted by him, who, of all others, knew most certainly the truth in respect to them, they must be taken to be true. And if held to be true, then the LaGrange Bank was an antecedent creditor, and being such, as to it, the settlement was fraudulent and void. Being void as to the creditor,

it is in like manner void as against complainant, the execution purchaser, who, by the well settled law of Missouri, stands in the place of and is entitled to all the rights and remedies enjoyed by the creditor, under whose judgment he purchased..

Gentry *et al.* vs. Robinson, 55 Mo., 260.
Henderson *et al.* vs. Dickey *et al.*, 50 Mo., 161.
Dunnica vs. Coy *et al.*, 24 Mo., 167.

III.

Even though it should appear that the complaining creditors are but subsequent creditors, yet the settlement is void under the Statute, and of no effect as against them, because made with fraudulent intent.

The fraudulent intent of the settlement is inferrable from various aspects presented by the facts in the case.

1. The fact that the settler was largely in debt—the settlement being voluntary—is a circumstance from which fraud may, and ought to be, inferred, unless the inference be repelled by contrary proof.

Reade vs. Livingston, 3 John. Ch. R. 501.
Richardson vs. Smallwood, Jac. R. 552.
Vernier vs. Humphreys, 14 S. & M. 130.
Redfield vs. Beck, 35 Conn., 338.
Mead vs. Gregg, 14 Barb. (N. Y.) 656.
Horn vs. Volcano Water Co., 13 Cal., 71-2.
Ridgeway vs. Underwood, 4 Wash, C. C. 137.
Hutchinson vs. Kelley, 1 Rob. (Va.) R. 134.
Charleton vs. Gardner, 11 Leigh., 293.

Huggin vs. Perrine, 30 Ala., 399.
Atherly on Mar. Settlements, 212, 213.
Freeman vs. Pope, 5 L. R. Chancery Appeal, 545.

2. The settlement, as will presently be shown, was made with a view to trade, or what is the same thing, with a view of being indebted at a future time.

The fact that it was made with this view is distinctly charged in the bill, (Rec. 33) and is not denied, but is as good as confessed in the answer. (Rec. 222.)

But whether the fact stands admitted or not by the pleadings, the testimony in the case relieves the subject of all doubt. The settler had been in the tobacco trade the two preceding years—the first year with Wakefield and Moon, the second with Mann. His last partnership had been ended only a month or so before, by the seizure and sale by the Government of his partner's interest in the firm property. There was an interval of a "few weeks" between the partnership with Mann and that with Blackwood, and *during that interval*, as Mr. Williams himself testified, (Rec. 341-2) "he was keeping things together and *making preparations for spring work*." The formation of the partnership with Blackwood was itself the avowal of the purpose to trade, and to persevere in the trade in which he had been engaged with his previous partners, and he did in fact continue in trade, as contemplated, until August, 1870. Both the co-partnerships that preceded the settlement had been in the habit of buying and selling on credit; both had been in the constant habit of discounting time acceptances of their customers—called tobacco paper—and also of effecting loans, in order to raise money to carry on their business. (Rec. 352 and 370. That Mr. Williams intended

to resort to the same expedients in the future, as in the past, to supply the requisite capital, is shown by what immediately ensued. The new firm of Williams and Blackwood "commenced work as soon as the weather would permit in the spring," (Rec. 358) and *before they commenced work*, (Rec. 347) Mr. Williams, as he testifies, paid in, in cash, as working capital, one thousand dollars or more. The money thus paid in by him, whatever was the amount of it, was raised, as we have seen, (Rec. 371) *on his credit*. In plain English, he had borrowed it. But this is not all: the new firm borrowed money and discounted the firm acceptances of its customers, just as its predecessors had done. Among numerous other debts and liabilities contracted by the settler after the settlement, for moneys actually lent and advanced to one and another of the partnerships to which he belonged, were the debts mentioned in the pleadings as due to the Quincy Bank, (see Rec. 266 to 270, also 381) and one or more of these to the LaGrange Bank, amounting together to more than thirty thousand dollars.

Thus it is plain that the settler not merely intended to trade, but as well, contemplated the creation of debts in the course of that trade, and *did immediately contract debts*, and constantly, as long as he remained in business, continued to contract debts. Not only does the testimony show that the settler intended trade and the contracting of debts, but it likewise unmistakably shows that the purpose of the settlement was to shield the property settled from liability for the contemplated debts and to throw upon others the hazards and contingencies of the intended trade. In proof of this, it is only necessary to recur to events that had but just transpired. It had just come to his knowledge that a liability for more than two thousand dollars, for Government taxes had been fraudulently put upon him by a quondam partner, who had fled the country. Upon the heels of this disas-

ter, came the Government seizure of the interest of Mr. Mann, his partner, in the partnership property, and the bankruptcy and ruin of the partner; and came, also, the discovery of the fact that the latter had overdrawn his account, and had left him, (Williams) unaided, to pay the firm debts, amounting, certainly, to not less than two thousand dollars. With these hard experiences fresh in his mind, and with a sense of the dangers of trade, deeper and more intense than ever before felt, he comes to the work of having a transfer made of the title to the property in dispute, which he had previously purchased and paid for. Instead, however, of having the title transferred to himself, as the contract of purchase contemplated and as was originally intended, he orders the vendor to convey to the wife, and assigns, as a reason for the order, (Rec. 402–6) "that he thought that everybody ought to provide for their family when they could; that a man could'nt tell what might happen; that it looked as if everybody you had anything to do with *tried to beat you.*" Or, in other words, he says: "I am intent on trade; and as my recent experience of the dangers that beset the pathway of the trader, has satisfied me that I may not be able to pay the debts which the intended trade contemplates, without stripping me of my property, I have resolved to provide for my family out of what I now have, and throw the risks of adverse fortune wholly upon others."

The settlement in hand being voluntary, and having been made with a view to trade, and for the purpose of providing against its contingencies, the law presumes, in favor of subsequent creditors, that it was made with fraudulent intent.

Black vs. Nease, 37 Penn. State R. 437–8.

Fisher vs Lewis 67 Mo. 632

By Woodward, J. "It is unquestionable law that a husband may settle property on his wife, even without the intervention of a trustee, provided he be free from debt, and *is not about to embark in business where his credit will be pledged for new indebtedness.* * * * * * * * * * But if such settlement be made in fraud of creditors, or on the eve of a new business, and with a view of providing against its contingencies, it is as unavailing against new creditors as against old ones."

Mullen vs. Wilson, 44 Penn. St. R. 416: (approves the judgment in Black vs. Nease, *supra.*)
Thompson vs. Dougherty, 12 Sarg. & Rawle, 446.
Churchill vs. Wells, 7 Cold. (Tenn.) 373.

In Sexton vs. Wheaton, *supra*, (5 Cond. R. 429,) it is said by Marshall, C. J., by way of relieving the deed there under consideration from the imputation of fraud, that "It appears that at the date of its execution he (the settler) *had no view to trade.*"

Goodell vs. Taylor *et al.*, Wright's (Chy.) R. (Ohio) 83. A conveyance from a father to a son, "with a view to insolvency, * * * * * * will be postponed to creditors."

McCoy vs. Douglass, L. R. 14 Eq., 106. The case was this: Douglass, the husband, *out of debt*, in February, 1864, settled about one-half of his estate on his wife, he at the time contemplating entering a partnership in trade with a then employer. In two or three months after the settlement, he went into the contemplated co-partnership. During the same year the firm contracted debts, and became utterly bankrupt. Bill was filed by creditors to set aside the settlement. On the hearing, Sir

R. Malins, V. C., completely exhonerated Mr. Douglass from any fraudulent intent in making the settlement, but nevertheless, because of the intent to trade, declared the instrument as an inference of law, "absolutely null and void as against creditors within the meaning of the Statute of Elizabeth."

Stileman vs. Ashdown, 2 Atk., 377.

Carpenter vs. Carpenter, 10 C. E. Green (N. J.) 199, is the case of a voluntary conveyance in 1866, of his farm and goods, by father to daughter. The daughter at once conveyed to the wife of the grantor. The grantor was at the time of the conveyance engaged, with another, in manufacturing a certain metal. The next year (1867) he contracted debts and became greatly embarrassed. In 1869, complainant became surety for the grantor on a promissory note, which he was afterwards obliged to pay, and to get reimbursement he brought a bill to set aside the voluntary conveyance for fraud. "The evidence," says the Chancellor, "leads to the conclusion that this transfer was made *with a view to his future indebtedness and to protect his property againts it.*" Decree as prayed by the bill.

Savage vs. Murphy, 8 Bosw., 76
S. C. 34 N. Y., 508.

3. *The contracting of debts by the settler, after the settlement, is a fact from which a fraudulent intent is inferable.*

Barling vs. Bishoff, 29 Beav., 417.
Case vs. Phelps, 39 N. Y., 164.
Thompson vs. Dougherty, *supra.*
Fisher on Lewis *supra*

4. *The expenditure of the moneys used by the settler in improving the property after the settlement, is a badge*

of fraud, and condemns the settlement as fraudulent.

Sedgwick vs. Place, 12 Blatch. 168.
Tappan vs. Butler, 7 Bosw., 480.
Dick vs. Hamilton, Deady, (Oregon) 322.

The property at the time of the settlement was not habitable, (Rec. 312) because in a state of nature, but was nevertheless acquired, as the answer to the bill states, (Rec. 219) for the purpose of a "homestead for the defendants and their family." As the property could be made subservient to that purpose only by the expenditure of money in improvements, such expenditures were of necessity contemplated by the parties, and were part and parcel of the plan of settlement.

The settler expended in improvements, about eight thousand dollars, according to his own testimony as given on his cross-examination. (Rec. 362 to 368). The improvements were begun in the spring of 1868, and were completed in 1871. (See Rec. 314). The last made consisted in the planting of the fruit-garden or orchard, covering about ten acres, part of which was done in the spring of 1869 and part in the spring of 1871, at a cost of about $300. (Rec. 314.)

The transfer of the land to Mrs. Williams was a single transaction in form, but in truth and in fact it comprehended as well the moneys subsequently expended in improvements, because, as we have seen, such expenditures were a part of the scheme, and were necessarily intended by the settlement. The scheme contemplated not only habitation and shelter for the beneficiaries, but as well, fields and pastures, and gardens, for purposes of support and subsistence to the sheltered. Each successive payment, while it operated as a new and separate conveyance of property to the wife and for her benefit, was but another step towards the consummation of the

one grand scheme. If any part of these proceedings of the settler falls within the censure of the law, it will reflect back upon and give character to all that preceded it.

More *et al.* vs. Blondheim, 19 Md., 176.
Sedgwick vs. Place, 12 Blatch., 168.

The following language of Mr. Justice Hunt, in the case just cited, *mutatis mutandis* of names and dates, is to the point: "If (Mr. Williams) was not honest in turning the property into the lap of his wife in the years 1868, 1869, 1870 and 1871, (after February 11th, 1868), we shall be justified in characterizing, in like manner, what took place on the 11th of February, 1868. The subsequent expenditures were distinct and separate acts, but in pursuance of a plan formed when the first step was taken, the whole to be taken as one transaction and to be judged of by what was contemplated at the outset; what was afterwards contemplated: and what did occur at various times in carrying it into perfection."

This being the rule by which the character and motive of the settlement are to be determined, the settlement must of course fall. When Mr. Williams, in August, 1870, dissolved his connection with the firm of J. R. Harris & Co., and retired from trade, he was in debt, as has been seen, not less than thirty thousand dollars, and all the property he had on earth, aside from that conveyed by the settlement, was some Quincy town lots, taken by him in exchange for his interest in the Lagrange tobacco works. What these lots were worth, the testimony does not disclose, but presumably not more than the thing given in exchange for them. The thing given in exchange, we have already ascertained, was worth not exceeding $3,000, two and a half years before. These lots have been disposed of, for he says he owns no land except one.

eighth of the 40 acres of prairie land, (Rec. 315) but for what, and to whom, and what has been done with the proceeds, the record fails to show. Certain it is no creditor has ever been blessed by either the lots or their proceeds. Then, when Mr. Williams quit business, he was bankrupt; and yet, in the spring of 1871, more than six months after his bankruptcy, he is still found turning his money "into the lap of his wife."

At this juncture it is, that, following up the original plan of the settlement, and in the accomplishment of the avowed purpose of providing (Rec. 219) a "desirable homestead for these defendants and their family," he expends $300, or thereabouts, in the creation of a fruit garden on the premises. If any of these expenditures reflect back and give character to the initial transaction, this one must. If this one does, then, as it *post dates* all of the debts of the complainants, the last named debts become antecedent to the settlement, and being antecedent, the settlement, as to them, is, as an inference of law, fraudulent and void. But, the circumstance aside that the last expenditure post dated the debts, Mr. Williams, in 1868 and 1869, when he expended so largely in improvements, was in no condition financially, in fairness to creditors, to make any such donations to his wife as those expenditures amounted to. If he was not insolvent before they were made, as he surely was, the making of them undoubtedly rendered him so.

5. The fact that Mr. Williams, within less than three years from the making of the settlement, became insolvent, is a circumstance of fraud, and throws upon him the burden of showing that he was solvent and in a situation which justified him in making the settlement.

Townsend vs. Westacott, 2 Beav., 340–345.
Crossly vs. Elworthy, Law Rep., 12 Eq., 158.

McKay vs. Douglass, Law Rep., 14 Eq., 106.
Sexton vs. Wheaton, *supra*. 429.
Fisher vs Davis *supra*.

The insolvency of Mr. Williams in August, 1870, when he withdrew from business, is hardly a disputed fact. What was his condition when he made the settlement? His having become insolvent so soon after the settlement, throws upon him the burden. How has he borne that burden? How has he accounted for his confessed state of insolvency in August, 1870? If he, or any co-partnership of which he was a member, lost a dollar by fire, or flood, or bad debts, or in any way, from the date of the settlement till he went out of business, the record is utterly silent in respect to it. No disaster of the sort is even hinted at, either in the answer to the bill or in the testimony in the case.

It is found that, as in the two and a half years preceding his insolvency, he grew more and more poor, his wife the while constantly grew more and more rich; and thus is his insolvency accounted for. In the light of the testimony, no other explanation of it is possible; and this consists with our main proposition, namely, that the settlement was made with fraudulent intent.

6. The conveyance to the wife was made upon the secret trust and confidence between her and the settler that she was to hold the title to the property conveyed, for the use and benefit of the settler and against his creditors, and would suffer and permit the settler to use, possess and enjoy the property as such secret beneficiary. Such secrecy is a badge of fraud.

Sidenpacker vs. Sidenpacker, 52 Maine, 490.
Clark vs. French, 23 Id., 221.
Goodel vs. Taylor, Wright's (Ohio). R. 83.

Shaffer vs. Watkins, 7 Watts & Serg. 219, 227;
McCullagh vs. Hutchinson, 7 Watts, 434.

The deed, it will be observed, (Rec. 50-51), is a mere deed of bargain and sale to the wife, without even naming the husband, and without any attempt to affect the marital rights of the husband.

The secret trust supposed, is manifest in various ways. The answer admits it when it avers, as it does, (Rec. 219) that "the purchase of said land" * * * * was for a "homestead for *these defendants* and their family." Mr. Williams, on the witness stand, (Rec. 314) says his object in *purchasing* and *improving* the land was a permanent home for his family—he it was who purchased and *improved*.

He regarded himself as proprietor, for, speaking of the ground and trees, (Rec. 308) he calls them "MY *piece of ground* * * *fruit trees, &c.*" He is the actor in everything relating to the property. (Rec. 314), "*I* moved with my family into the property." (Rec. 360). "*I* commenced the foundations." (Rec. 362). "*I* added a shed addition." (Rec. 363). "*I* have a house used as a wash house." (Rec. 372). "*I* have paid all the taxes that have been paid"—have *collected all rents* and profits, have *sold all the fruits* that have been sold, and have *received the pay* therefor. In brief, the wife has been proprietor only in name—only by mention as grantee in the title deed. In everything else the rightful supremacy of the husband has at all times been claimed by him, and tacitly conceded by the wife.

Again—

An instrument which misrepresents the transaction that it recites is evidence of a secret trust.

Kempner vs. Churchill, 8 Wal., 362.
Drover vs. McLaughlin, 2 Wend., 596.

The deed to the wife in this case falsely recites the payment of the purchase price by the wife, whereas it was wholly paid by the husband, and this false recital is therefore a badge of fraud.

7. The tract of land conveyed to Mrs. Williams, the donee, by the deed of 11th February, 1868, was a tract described by clear and well defined boundaries, lying in the *Southwest quarter* of section 25. It turned out that the tract really sold and intended to be conveyed by this deed, lay in the *Southeast* quarter of the section. It was to correct this error in the description that the second deed, or deed of 1871, was executed.

The recording of the first deed—deed of 11th February—was constructive notice of the title of the grantee *to the tract it described*, but it was neither actual nor constructive notice of her title to the tract in dispute, not therein described. There is no pretence that anybody but the parties to the transaction had actual notice of the title of Mrs. Williams.

Mrs. Williams then—whether by accident or by design is not material—suffered the public to remain in ignorance of her title, and permitted her husband, the settler, to occupy, use, and possess the property as owner, and to obtain credit from the complainants and others on the faith of his supposed ownership.

The husband's actions, and uniform declarations, alike proved him—not the wife—to be the owner. There is not a scintilla of evidence in the record that the wife's ownership was ever heard of by the general public, or by the complainants, till long after the husband had possessed himself of the complainants' money. Her pretensions to the title were so profound a secret that they were never heard of, even by Mr. Alverson, living in the same town, in daily intercourse with the husband, and the President

of one of the creditor Banks, till the year 1873. (Ques. 32, Rec. 283.)

As between the wife, a volunteer, and the creditors of the husband, without notice of the wife's title, the rights of the creditors are superior to those of the wife, even supposing there was no actual fraud in the transaction.— The husband's possession was a badge of fraud.

In any aspect, therefore, in which the case may be viewed—whether as a case involving the right of antecedent creditors or subsequent creditors, or as a case of constructive fraud or actual fraud, the decree of the Circuit Court must be affirmed.

W. S. DRYDEN & DRYDEN,
AND H. S. LIPSCOMB,
For the Respondents.

16-260

—IN THE—

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1882.

WILLIAM Y. WILLIAMS AND SARAH C. WILLIAMS,
Appellants,
vs.
URI S. PENFIELD, *et al.*,
Respondents.
} *No. 19.*

[Appeal from the Circuit Court of the United States for the Eastern District of Missouri.]

REJOINDER OF RESPONDENTS' COUNSEL TO BRIEF AND ASSIGNMENT OF ERRORS BY APPELLANT.

JOHN D. S. DRYDEN,
Of Counsel for Respondents.

—IN THE—

SUPREME COURT OF THE UNITED STATES

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It was not until within the last ten days, and long after my brief and argument in chief had come from the press, that I became possessed of the appellants' assignment of errors in the case. I will, therefore, with the permission of the Court, make such observations now, by way of reply, respecting the matters assigned for error, as the occasion may seem to require.

I have no desire to add to what I have already presented in my brief and argument, bearing on the questions raised by the first and second assignments.

The THIRD error assigned complains that the effect of the decree which directs that "ALL the right, title, interest and estate which the defendants had in the property" should be vested in the plaintiff, Penfield, is to deprive the wife of her dower in case she should survive her husband.

1. Mrs. Williams, as wife, had no such interest in the land as the decree could affect.

The right of a wife, living her husband, to dower in his lands "is no estate or interest, but only a possibility."
Fuller *vs.* Wright, 18 Pick. 405, per Shaw, C. J.

In the then stage of her right she had not even a *chose* in action in respect to the estate, nor is her right in any sense, an interest in real estate.
1 Washb. on Real Prop. * p. 250.
Moore *vs.* New York, 8 N. W. (4 Seld.) 114.
Johnson *vs.* Vandyke, 6 McLean, 422.

The inchoate right of the wife to dower *is not transferable*, or the subject of grant. "Her deed, even of grant, does not pass any title to the estate." 1 Washb. *supra*. Her right may be released or extinguished, *but cannot be conveyed or transferred*.

"The grant or release of the wife operates by way of estoppel or extinguishment of her right, so as to bar any future claim of dower which may accrue to her after the death of her husband. The usual form is for the wife simply to relinquish or release her right of dower; but words of grant are equally efficacious and proper to bar her right: for in neither case does her deed *pass any title* to the estate."
Learned *vs.* Cutler, 18 Pick. 11; Gunnison *vs.* Twitchell, 38 N. H. 68; 1 Wash., *supra*, 203.

If such right be not transferable, then in this case, the right in question was not affected by the decree, for *a transfer* is all that the decree professes to accomplish; and so the decree does the supposed right no harm; and, there is, therefore, no error in the decree.

2. The objection under consideration rests upon the no-

tion that the decree complained of would conclude the wife in an action by her for her dower after she became discovert. I respectfully submit that the decree can have no such effect.

The suit was a bill to set aside a voluntary settlement upon the wife, made in contravention of the rights of the creditors of the husband. The parties charged appear and answer, denying the fraud imputed, and asserting the fairness of their motives and conduct, and demanding that the impeached transaction be adjudged to be effectual, and that the beneficiaries be suffered to retain the property in controversy in its *entirety*, under the impeached settlement. And this was the whole matter in dispute. There was no allusion, directly or indirectly, to the *dower* right of the wife anywhere in the record; and of course, therefore, it was not a subject of *dispute* between the parties.

Upon a trial, the issues are found for the plaintiff—the transaction is found to be fraudulent as charged, and the court, to give effect to its finding, makes its decree by which "All the right, title, interest and estate" which the defendants had, at a time mentioned, in the property in dispute vested in the plaintiff.

"A judgment concludes the parties as to the rights drawn in question by the pleadings, *but no farther*." Arnold *vs.* Arnold, 17 Pick. 8. "In every action the verdict is conclusive as to the subject matter particularly put in issue and found by the jury." Id. 9. "But the parties are concluded only as to the facts distinctly pleaded and put in issue." Id. 12. "We must, therefore, ascertain in every case, where a judgment in a former action is pleaded in bar precisely *what was judicially settled* in the former action, and what was the cause of that action to be tried." Id. 13.

Spooner *vs.* Davis, 7 Pick. 149.

1 Greenf. Ev., § 528.

Whether the wife's complicity in the fraud, found by the court, would not have the effect of depriving her of dower, need not be considered now. It is enough for the present that the decree itself would have no such force.

As the decree, then, will not conclude Mrs. Williams in respect to any right of dower she may have in the property, it is not erroneous in the respect complained of

The FOURTH error assigned complains "that the court did not save to Williams the homestead exemption."

As against the complaining creditors, represented by Penfield, their trustee, Williams was entitled to no homestead exemption.

The homestead is subject to all debts existing "at the date of filing in the proper office for the records of deeds the deed of such homestead" as provided by statute as follows:

"SECTION 7. Such homestead shall be subject to attachment and levy of execution upon all causes of action existing at the time of the acquiring such homestead, except as herein otherwise provided; and, for this purpose, such time shall be the date of the filing in the proper office for the records of deeds the deed of such homestead, and (in case of existing estates) such homestead shall not be subject to attachment or levy of execution upon any liability hereafter created."

In other words, in respect to homesteads acquired after the passage of the act of 1865 just quoted, there is no exemption as against debts existing at the time of filing the deed of the homestead for record in the proper recorder's office, and it does not alter the case that the property has been previously occupied as a homestead.

This statute, and especially this section of it, has been twice under review by the Supreme Court of this state. In Shindler *vs.* Givens, 63 Mo. 394, the case is this: In January, 1870, Givens, the claimant of the homestead, purchased the premises and received a deed therefor, and with

his family immediately thereafter located upon the property and continued to reside thereon, but did not lodge his deed for record until January, 1874. In the interval between the purchase and the recording of the deed, the debt sought to be enforced against the homestead was incurred by Givens, and the question was whether, under the circumstances, the homestead exemption existed.

The Court, after certain preliminary remarks, delivering its opinion, proceeds thus (page 396):

"Thus much as prefatory to the consideration of Section 7, on which we regard this case as hinging.

"That Section provides, among other things: 'Such homestead shall be subject to attachment and levy of execution upon all causes of action existing at the time of acquiring such homestead; * * * and for this purpose such shall be the date of the filing in the proper office for the records of deeds the deed of such homestead,' etc., etc.

"The evident object of this Section, so far as it bears on the subject matter of the present controversy, was to establish an unalterable criterion to govern in all cases where disputes should arise as to the period when the homestead was acquired. That period, as definitely settled by statutory enactment is 'the date of the filing in the proper office, etc. the deed of such homestead.'

"Plaintiff's cause of action must certainly have existed anterior to the rendition of judgment in their favor, in August, 1873, and since Given's deed was not filed for record until January, 1874, we can not, without altogether ignoring the legislative test, hold that any homestead was acquired prior to the last mentioned period. This being the case, Givens had no such homestead right as could be successfully asserted in opposition to a cause of action which was necessarily a subsisting one at the time the plaintiffs recovered judgment against him."

In Lincoln *vs.* Rowe, 64 Mo., 138, Shindler *vs.* Givens was cited by the court with approval, and it was again declared that the prior record of the deed of the homestead

was a necessary condition to homestead exemption under the statute.

This being the law there could, under the facts, be no homestead exemption in this case. The deed that conveyed the property in dispute to Mrs. Williams was neither made nor recorded until *December, 1871*, long after the debts of all the complaining creditors had accrued.

It will not do to say that the deed of February, 1868, conveyed the homestead and was recorded. It conveyed nothing; or, if anything, a tract other than and wholly distinct from the land in controversy. It was because it was not a conveyance of the homestead that the deed of December, 1871 was made. It may be that in the interval between the making of the two deeds, Mrs. Williams (as between her and the vendor) had an equitable title to the land in dispute, in virtue of the contract of purchase and payment of the price, and entitled to have a deed. But that did not bring her up to the requirements of the statute, the deed of 1868 not being a deed for the land in dispute. She was in no better condition than if she had had no deed at all. And it will hardly be pretended that under the well-considered construction of the statute by the Missouri Supreme Court, a homestead exemption can exist without a deed of the homestead, and without that deed being of record. Nor will the possession of the land in dispute under the deed for another tract help the matter. Shindle *vs.* Givens, *supra*. No notice other than the recording of the deed will secure immunity. Suppose the claimant of a homestead by an unrecorded deed give actual express notice of his deed to his creditor at and before the contracting of the debt, would anybody contend that such notice would satisfy the statutory requirement to record, and give the debtor exemption? Much less would possession and the exercise of acts of ownership satisfy that requirement.

But even if the deed of 1868 were to be held to be a deed of the homestead, still the homestead exemption fails because one of the debts or part thereof, for which the prop-

erty, sold by the sheriff existed anterior to that deed and to the recording of it. (See Respondents' Brief in chief, pp. 24 and 25.)

Thus far the argument has proceeded upon the supposition that if the statutory condition had been met, exemption of the property from liability for the plaintiff's debts would have been possible. But I deny that where, as in the case in hand the homestead is the product of the creditor's money fraudulently invested by the debtor for the purpose of an asylum for the debtor against such creditors, such homestead is entitled to the exemption provided by the statute.

The court committed no error in not saving to Williams the homestead exemption.

The *fifth* error assigned complains that "the court at the instance of the purchaser ratified an unconscionable bargain, and set at naught the equity maxim that 'he who asks equity must do equity.'"

As to the complaint of the unconscionableness of the bargain, I beg leave to answer the same in the words of his Honor, Judge Treat, who tried the case (printed record, p. 167): "The amount bid at said sale was small; yet that fact cannot be urged in behalf of a debtor who had sought to cover up his estate, whereby a bidder knows that his purchase involves protracted, and it may be, doubtful litigation. It is the consequence of his own attempted wrong that the property has yielded less than it would have done if he had not involved it in a tangled net of fraud."

But as to the equity maxim invoked, that maxim is sadly out of place in the mouth of the appellants. What equity do the respondents owe to them? Appellants stand here the confessed debtors of the respondents for immense sums of money in the possession of a large estate, the fruits and avails of the creditor's money, and set the creditors at defi-

ance, and content themselves by crying: "He who asks equity must do equity."

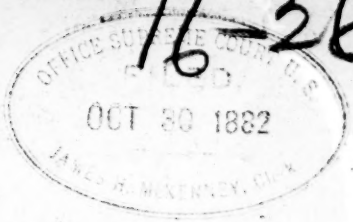
It is respectfully submitted that as for any of the errors assigned, the decree of the Circuit Court ought to be affirmed.

JOHN D. S. DRYDEN,
Of Counsel for Respondents.

St. Louis, October 7, 1882.

PIERCE BROS.' PRINT,
ST. LOUIS.

16-260



—IN THE—

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OCTOBER TERM, 1882.

WILLIAMS *et al.*, *Appellants*,
vs.
PENFIELD *et al.*, *Respondents*,
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[Appeal from the Circuit Court of the United States for the Eastern District of Missouri.]

REPLY OF RESPONDENT'S COUNSEL TO SO MUCH OF THE PRINTED ARGUMENT OF COUNSEL FOR APPELLANTS, FILED SINCE THE SUBMISSION, AS BY THE TERMS OF THE SUBMISSION HE MAY REPLY TO.

JOHN D. S. DRYDEN.
For Respondents.

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In this case two deeds to Mrs. Williams figure; one dated the 11th of February, 1868; the other the 13th of December, 1871, each recorded soon after its execution.

Up to the submission of the case to the court a few days ago it had been conceded on all hands, by all parties, in all of the proceedings everywhere that the deed of 1868 was erroneous in the description of the property in controversy, and insufficient and inoperative to pass the title; and that the deed of 1871, and that only, was effectual to that end. On that subject the parties were in perfect accord both as to the facts and the law. The misdescription of the property, and the insufficiency of the one deed, and the sufficiency of the other were distinctly alleged in the bill, [Printed Record p. 19] and these allegations were expressly admitted by the answer in these words:

"These defendants further answering say that the error in the description of the premises so intended to be conveyed was afterwards discovered, and that upon the discovery of such error, and on or about the 13th day of December, A. D. 1871, for the purpose of correcting such error and to obtain a proper conveyance of the lands so purchased, the said James H. Skinner and Mattie C. Skinner, his wife, by their certain deed of conveyance duly executed, acknowledged and delivered, at the instance of these defendants conveyed to the defendant, Sarah C. Williams, the said property so purchased and intended to be conveyed by said first mentioned deed."

The case having come into this court by appeal from a decree in the court below against the appellants, the appellants assigned for error:

1. "That the court did not [in its decree] save to Williams the homestead exemption."

To this the respondents replied that, by the statute of Missouri, no homestead exemption exists as against debts contracted prior to the recording of the deed to the land in which the homestead is claimed; and that as the debts to the respondents antedated the deed and the recording of the deed of 1871 which conveyed the property in which the homestead is claimed, no homestead exemption existed, and there was none to save, and so the decree was not obnoxious to the objection urged.

But strange enough, to avoid the force of the reply, the learned counsel for the appellants in their lengthy and elaborate printed argument filed since the submission, shift their ground and abandon the deed of 1871, and fall back on the deed of 1868 as the muniment of the appellants' title, and attempt to show that the last named deed operated to convey the title. This is a new departure—a point not before raised or discussed in the case; a point in the very teeth, as has been seen, of what has before been conceded by all the parties, a

point, therefore, which by the terms of the submission I am at liberty to reply to.

1. The misdescription of the property in the deed of 1868 being expressly affirmed by the parties by matter of record, the parties are estopped and precluded from gainsaying what they have thus so solemnly declared.

2. Even if the sufficiency of the description was open to enquiry there is nothing in the record to justify the conclusion that it was sufficient. Everything in the record upon which reliance may be placed points to its insufficiency. The land confessedly lies in the south *east* quarter of the section, and yet it is plainly described as lying in the south *west* quarter—a half mile distant. The deed of 1871 affirms the misdescription by the deed of 1868. The same is true of the answer to the bill as we have seen. And Williams, the husband, on the witness stand swears to the misdescription. [See his testimony, printed Record, pp. 109 and 110.]

The judgment, thus repeatedly expressed, that there was a fatal misdescription of the property, was not hastily formed, but, presumably, was formed deliberately, upon a view of every paper and fact that would aid in reaching a sound conclusion. The discovery that the deed of 1868 was without fault and effectual in conveying the title, and that all who had previously had the subject under consideration had blundered, was a discovery reserved to the learned counsel who represent the appellant in this court. Let us see what their discovery is worth. They admit that there was a mistake in the deed, but say that it was harmless because the error was corrected, as they contend, by a plat, which was referred to in the deed. And they cite an elementary writer on conveyancing to prove that the reference

in the deed to the plat had the effect to incorporate the plat into the description the same as if copied into the deed itself, and to pass what is described in the plat Let it be conceded that the reference to the plat has the effect contended for. What is the thing conceded worth in the circumstances of this case? If the plat is to have the effect that is desired it must be produced so that its contents may be known and examined and considered and judged of. But here nothing of the sort was done. There is no plat in the record. None was produced in the lower court, and of course none here. What aid, then, can this plat, the contents of which are unknown, afford in identifying the land in question? Who can affirm, in the absence of the plat, what its contents were. What its marks, or notes, or designations? For aught that appears, its contents would disclose that it was a plat of lands in an entirely different section, or township, or range. But is enough that its contents do not appear. Without its contents it is as if it had no existence.

The citation from the Revised Statutes of Missouri (§7384) affords the other side no help. They suppose [see their argument since submission, p. 18–19] that by the provisions of that statute the supposed plat was required to be recorded in the same Recorder's office as that in which the deed was recorded.

In this they are in error. The statute cited, in so far as it bears on the subject of recording plats or surveys in the Recorder's office, was first passed into a law in 1873, *five years and more* after the execution of the deed of 1868. The section cited (section 7384) is a revision of the original act of 1873, and found in Vol II of the Revised Statutes of 1879, at page 1447, where the origin of the revised section is noted. There is therefore no ground for the suggestion that the supposed plat was to be found in the recorder's office, or that anybody was affected

with notice of its contents. I submit, therefore, that the deed of 1868 must be held as it has always hitherto been held ineffectual to convey the land in dispute, and that the deed of 1871 it was, and that only, that had that effect.

I may properly allude to another matter in the last printed argument of the adversary. I am represented there as occupying inconsistent ground respecting the deed of 1868. They say (at page 17) that "it (the deed of 1868) was treated by counsel for appellees *as the deed which conveyed the property*." In this I have been greatly misapprehended. In the draft of the bill [Pr. Rec. 19] the deed of 1868 is treated as ineffectual, and from that time to this it has been treated in the same way.

Again, I respectfully submit that the decree of the court below should in all things be affirmed.

JOHN D. S. DRYDEN.

For Respondents.